

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

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PETITION OF NORTHERN INDIANA )  
PUBLIC COMPANY OF INDIANA FOR THE )  
COMMISSION TO DECLINE TO EXERCISE, )  
IN PART, ITS JURISDICTION AND FOR )  
APPROVAL OF ALTERNATIVE )  
REGULATORY PROCEDURES FOR THE )  
OFFERING OF AN EXPERIMENTAL FIXED )  
GAS BILL RIDER TO GAS SALES )  
CUSTOMERS )

CAUSE NO. 42097

APPROVED: JUL 03 2002

**BY THE COMMISSION:**

Judith G. Ripley, Commissioner  
Gregory S. Colton, Administrative Law Judge

On October 15, 2001, Northern Indiana Public Service Company ("Petitioner", "NIPSCO" or the "Company") filed its Verified Amended Petition in this Cause seeking approval of a Fixed Gas Bill service (the "FGB program"). On February 13, 2002 a Petition to Intervene was filed by NiCOR Energy Services ("NiCOR"). The Petition to Intervene was granted during the hearing in this matter.

Pursuant to notice as required by law, proof of which was incorporated into the record by reference and placed in the official files of the Commission, a hearing was held on February 28, 2002 in this Cause at 9:30 A.M. EST in Room TC10, Indiana Government Center South, Indianapolis, Indiana. At the hearing, Petitioner and the Office of Utility Consumer Counselor ("OUCC") presented evidence. No members of the ratepaying public were present at the hearing.

Based upon applicable law and evidence presented herein, the Commission now finds:

1. **Notice and Jurisdiction.** Due legal and timely notice of the commencement of the hearing in this Cause was given and published by the Commission. Petitioner owns and operates a public utility which is subject to the jurisdiction of the Commission as provided in the Public Service Commission Act, as amended. In its Verified Petition, NIPSCO stated that it was electing to become subject to Ind. Code 8-1-2.5-5 for purposes of its filing. The Commission has jurisdiction over the parties and the subject matters of this Cause.

2. **Petitioner's Characteristics.** Petitioner is engaged in rendering natural gas utility service to the public within the State of Indiana and owns, operates, manages and controls plant and equipment used for distributing and furnishing such service.

3. **Relief Requested.** By its October 15, 2001 Amended Petition, NIPSCO submits for Commission approval an FGB service pursuant to the provisions of Ind. Code 8-1-2.5-1, et seq. The provisions thereunder authorize the Commission to approve alternative regulatory practices, procedures and mechanisms for energy utilities.

NIPSCO proposes, upon Commission approval, to offer an FGB service that permits residential and commercial customers to fix their annual gas bills payable to NIPSCO for an annual period regardless of the change in the price of natural gas or the weather's impact on a customer's consumption during that annual period. The FGB service is different from Petitioner's Budget Billing Plan which calls for a true-up at the end of the annual period and the Company's Price Protection Service ("PPS") product which permits the customer to lock in the price that they will pay for an annual period but the monthly and annual bills vary based upon a customer's consumption. Under its Amended Petition, the Company requests that the Commission waive its jurisdiction for the limited purpose of permitting the Company to vary the Program Fee provided to the customer under the FGB service.

*Fixed Cost*

4. **Adequacy of the "Plan."** The OUCC argued that Petitioner failed to present a "plan" as required by IC 8-1-2.5-6(c) and -6(e) because there is no single document that explains the terms and conditions of the FGB program. Instead, as NIPSCO stated in its Amended Petition:

The FGB customer service agreement as supplemented by NIPSCO's customer communication material, other terms and conditions for offering the FGB Service program as set forth in the proposed FGB rider tariff and attached hereto as Exhibit A, constitutes the Company's alternative regulatory plan for the purposes of this proceeding.

The OUCC characterized this as a "puzzle" instead of a "plan."

NIPSCO countered that the OUCC's argument, which was first raised in its proposed order, appears to assert that Section 6(c) requires the filing of a comprehensive alternative regulatory plan. NIPSCO argued that such an interpretation ignores the provisions of Section 6(a), which permit a utility to seek approval of alternative practices, procedures and mechanisms, and clearly do not require the submission of a comprehensive plan. NIPSCO further argued that the OUCC's reading of Section 6(c) is overly broad and would essentially render Section 6(a) a nullity.

The Commission notes that the evidence presented by NIPSCO does inform the Commission how the FGB product was developed, how the product will be marketed, how the service will be implemented, and how it will be administered. To the extent a plan is required, the totality of NIPSCO's evidence has described its plan from beginning to end. While the Commission would have preferred to see a single document setting forth the entire scope of the FGB program, we nevertheless find that NIPSCO's evidence complies with the requirements of Section 6 and has properly invoked the subject matter jurisdiction of this Commission. We describe below the essential provisions of that plan.

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5. **Description of the Fixed Gas Bill ("FGB") Program.** The purpose of NIPSCO's FGB program is to provide customers the option of receiving a guaranteed/predetermined annual bill for natural gas service, regardless of weather or changes in natural gas prices, spread over twelve equal monthly payments. NIPSCO proposed to offer the FGB service on an experimental basis for a three-year period to eligible residential, multi-family, governmental housing and small commercial/industrial customers. Mr. Michael Martin stated that unlike NIPSCO's budget bill customers, the FGB customers would face no mid-year adjustment, annual true-ups or reconciliation adjustments. He also noted that enrollment in the FGB service is at the customer's sole discretion and commits the customer to participation for a term of one year.

According to Mr. Martin, a customer's eligibility for FGB service is dependent upon three factors: (1) the availability of individual customer consumption data, (2) gas usage that is sensitive to temperature variations and (3) existing credit worthiness considerations. Mr. Martin testified that in order to estimate expected usage accurately, a minimum number of actual meter reads for each eligible customer is required because the degree of a customer's weather sensitivity is an important factor in developing FGB quotes. He also noted that from a customer's perspective, predictability is important to ensure that the FGB accurately reflects the customer's consumption profile. The value of the service option may be decreased if consumption is not temperature sensitive. From NIPSCO's perspective predictability is also important since it reduces the risks associated with offering the FGB service.

Mr. Martin noted that Budget Payment Plan customers are eligible for FGB service. Such customers would have the balance settled up with any credit or debit applied to the customer's account balance. The debit balance would come due with the customers first monthly FGB billing and any credit balance would be applied against the first FGB billing. If the credit exceeds the first FGB billing, a continuing credit would be applied to subsequent statements until the credit balance is reduced to zero. Or, if the customer wants, after the first billing, if a credit exists, the customer can request a refund check. Mr. Martin estimated that approximately 75% of all residential and small commercial firm customers will be eligible for the FGB service. However, the Company proposes to limit the eligibility of this service to the first 30,000 customers who sign up.

Mr. Martin testified that NIPSCO had entered into an agreement with Weatherwise USA, Inc. ("Weatherwise") which will be responsible for developing the individualized FGB quotes for each eligible customer for a twelve-month period. Weatherwise will take customer consumption information and calculate the FGB annual amount by using a proprietary computer modeling program. This program analyzes the individual customer usage and the relationship of that usage to actual temperature data for a determined period to determine the relationship between consumption and heating degree days for each customer. This relationship is then used to calculate the expected consumption by month for the applicable period. Mr. Martin stated that NIPSCO then provides Weatherwise the applicable unit rates and fixed charges anticipated for the upcoming twelve-month period (including gas services, tariff delivery charges, applicable

taxes and fees and gas cost variance balance for the first year fixed bill customers) and Weatherwise applies this information to the customer's expected usage to determine the final fixed FGB quote.

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Mr. Martin stated that service under the FGB Rider would have identical reliability characteristics to all other NIPSCO products serving residential or small commercial/industrial customers. Customers may enroll by agreeing to the program's terms and conditions through telephonic means, direct mail or via the Internet site. Such customers must commit to service for a one-year period and will be automatically reenrolled in the program unless the customer notifies NIPSCO that they wish to be removed from FGB service. Each customer will be notified thirty days prior to the conclusion of the contract term. Mr. Martin testified that the proposed tariff and terms and conditions give NIPSCO the right to terminate FGB service for a number of reasons. First, if the customer usage is greater than 115% of historical usage, NIPSCO reserves the right to terminate service. Second, if the customer moves residences during the contract period, service will be terminated. FGB service can also be terminated for non-payment. Finally, termination can occur by virtue of the customer's early withdrawal.

Mr. Martin stated that all customers would be subject to a \$30.00 termination fee that is intended to cover all administrative costs associated with early withdrawal. In addition, customers who are terminated would be subject to a charge to cover the cost incurred by the Company to acquire fixed gas cost supplies on behalf of the FGB customers. For example, for residential service, this proposed charge would be \$10.00 per month measured from the time of termination to the customer's annual service contract expires. For all other customers, a similar charge will be assessed but will be predicated on the basis of their specific usage profile due to the variability of consumption in this customer's group as outlined in the customer contract. Finally, a customer exiting the FGB service will be billed an early termination adjustment which is computed by subtracting the amount paid to the termination date under the FGB program from the product of the actual metered consumption applied to the rates and charges applicable to FGB service. Mr. Martin said that a customer would not be removed from the program without notification, and until being given the opportunity to remedy excess usage or non-payment.

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In the first year of the FGB program all participants will be required to pay a 10% Program Fee. According to Mr. Martin this fee will vary from year to year depending on market or competitive forces, and the Company is requesting that the Commission decline to exercise its jurisdiction over future changes in the Program Fee. In his Direct Testimony, Mr. Martin proposed that the FGB Program Fee fluctuate in a range from a minimum of 4% up to a maximum of 10%. The minimum of 4% represented the contractual amount of the Program Fee paid to Weatherwise to compensate Weatherwise for funding the marketing of the program, providing modeling capabilities for governing some of the program risks related to target enrollment and for providing ongoing support. Mr. Martin stated that depending on program costs, business risks and marketing conditions, NIPSCO had planned to assess a Program Fee of up to 6% which would be reassessed annually and that it was the Company's intent to assess FGB customers a

Program Fee of 6% in the initial year of the program. In his Supplemental Testimony, Mr. Martin discussed the Company's decision to remove the 10% cap on the Program Fee for FGB services. Mr. Martin noted that if NIPSCO's prices for the FGB product are too low or too high or miscalculate the estimated consumption, it is possible that NIPSCO's shareholders will be responsible for the resulting losses. He noted that even a 10% Program Fee does not guarantee that the Company will earn a return on the FGB product. Rather, in the Company's opinion, it is a range that adequately mitigates the risk inherent in offering the FGB product while providing some opportunity to earn a return for its shareholders.

Mr. Martin testified about the process that would be used to procure gas supply for FGB service and the controls that will be implemented by NIPSCO in order to ensure other customers will not be impacted by the gas supply arrangements associated with this service. He said that the FGB portfolio will be separate and distinct from the GCA portfolio. In order to meet FGB supply requirements, NIPSCO's gas supply group will secure a portfolio of fixed price volume and fixed price variable volume contracts. This portfolio will be capable of supplying gas over a range of volume sufficient to serve the varying demands of heat sensitive customers. In addition to commodity gas, the gas charges included in the final quote to the customer will include demand cost and the cost associated with the over/under recovery of gas cost for customers in the first year of the program. Throughout the program, Mr. Martin stated that the gas supply group will estimate the supply requirements for FGB customers on a real time basis and make appropriate gas supply adjustments within the FGB portfolio. These adjustments will be separate and distinct from the GCA portfolio. He said that NIPSCO's shareholders, not its ratepayers accept the inherent price and volume risks in the management of the FGB portfolio. He went on to further state that all purchases for the FGB portfolio will be made in the context of a competitive bidding process. Any purchases for FGB service will not be co-mingled with supplies purchased to support traditional GCA customers. This process is specifically designed to prevent subsidies across different supply portfolios. He said that the process utilized for the FGB portfolio and purchases made to support the traditional GCAs will be priced at prevailing market conditions and maintained separately from purchases to supply non-GCA customers. This process is currently utilized for NIPSCO's PPS service. He also said all gas supply transactions both for the FGB portfolio, the PPS portfolio and the traditional GCA portfolio will be subject to state regulatory audit.

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Mr. Martin also proposed that any revenues and expenses related to the FGB service be recorded below the line. In his opinion, any revenues received from the assessment of the FGB Program Fee are dependent upon competitive market place considerations and not commission determination. Further, the FGB service is optional and any revenues gained through the assessment of the Program Fee would be totally unrelated to the operating income level approved by the Commission in the Company's last rate proceeding. Finally, any profits or losses related to the commodity gas supply purchased specifically for customers enrolled in the FGB Program will not be passed along to other customers. As a result, any gains or losses received when compared to

actual costs of gas purchase for FGB customers to the revenues received for the commodity gas supply as part of the FGB quote should not be reflected above the line.

*Educational and communication efforts*

Ms. Karen Stafford, Manager of the Consumer Programs Department for NIPSCO, submitted direct testimony to describe the educational and communication efforts that were planned by NIPSCO with regard to the FGB program. She stated that the overall objective of NIPSCO's education and communication efforts with regard to the FGB service will be to inform all customers of the potential benefits, terms and conditions, costs and obligations of all available service options including the FGB service. She said that it is the Company's intention that any customer enrolling in the FGB program do so on a fully-informed, voluntary basis with full recognition of the service alternatives available to each customer. As to the Company's initial communication efforts, Ms. Stafford stated that during the enrollment period, NIPSCO will inform its customers of the potential benefits, terms and conditions, costs and obligations of the program. The customers choosing to participate will receive follow-up information and have a ten-day grace period in which to cancel their participation.

Ms. Stafford said that the customer will be informed of the FGB program through press releases, bill inserts and bill messages. NIPSCO's Community Affairs Department will prepare press releases and be available to answer any media or community questions. They will also be prepared to schedule community meetings as necessary. She said that a bill insert will be mailed to all residential and commercial customers which describe the program. Furthermore, all eligible customers will be notified of the FGB program via a bill message which will include an individualized monthly quote and time period for enrollment. Also, Ms. Stafford stated that NIPSCO's website will have a link fully describing the FGB program and a list of frequently asked questions. The Company also plans to have follow-up telephone calls with customers who have received a direct mail packet who have not enrolled. She further stated that tape verification of enrollment and cancellations will be maintained for thirteen months. The Company will maintain a specific hotline at the start of their enrollment period to address customer questions. Finally, all new enrollees will receive a welcome letter that outlines their monthly required payment program, effective date and terms and conditions.

Ms. Stafford sponsored an exhibit that contained the Company's educational and communication materials, including materials explaining all of NIPSCO's available programs and associated benefits/risks with regard to each option. The materials also outlined termination fees and associated expenses in enrolling in the FGB program. Ms. Stafford stated that the materials clearly state that the FGB program is intended to provide price certainty and protect customers from the impact of energy price changes and temperature changes. The materials notify customers that the FGB program includes fees and may or may not save them money because the program is designed to provide predictability, not cost savings. Ms. Stafford said that the Company is planning to spend approximately \$75,000 in the initial roll-out phase of the program.

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**6. Evidence Presented on the FGB Program and Commission Findings.**

In its amended Petition, NIPSCO requested that the Commission: (a) decline, in part, its jurisdiction over the experimental FGB rider and approve the alternative program, (b) adopt such alternative regulatory procedures as necessary to permit the offering of the fixed gas bill rider, and (c) make such further orders and provide such further relief as may be appropriate. It appears to the Commission that Petitioner seeks review of the FGB program as an alternative regulatory practice under I.C. 8-1-2.5-6(a). That provision states that Commission approval may be granted if the proposal is in the public interest. In making its public interest determination, the Commission is required to consider the following four criteria set forth at I.C. 8-1-2.5-5:

- (1) Whether technological or operating conditions, competitive forces, or the extent of regulation by other state or federal regulatory bodies render the exercise, in whole or in part, of jurisdiction by the commission unnecessary or wasteful.
- (2) Whether the commission's declining to exercise, in whole or in part, its jurisdiction will be beneficial for the energy utility, the energy utility's customers, or the state.
- (3) Whether the commission's declining to exercise, in whole or in part, its jurisdiction will promote energy utility efficiency.
- (4) Whether the exercise of commission jurisdiction inhibits an energy utility from competing with other providers of functionally similar energy services or equipment.

With the above criteria in mind, we turn now to the evidence presented for and against the FGB Program.

**A. Petitioner's Evidence.** Mr. Goodwin, Manager of Product Development-Mass Markets, submitted direct testimony describing the market surveys NIPSCO conducted prior to developing the FGB program and describing NIPSCO's partnership with Weatherwise in implementing and operating the program. Mr. Goodwin testified NIPSCO sponsored two separate research studies with an independent research firm, NFO Research, Inc. ("NFO"). The first research study took place in May and June of 2000 and consisted of a questionnaire that was mailed to 4,166 households in six geographic regions throughout NIPSCO's gas service territory. The results of this survey showed that 28.2% of the respondent's would be either extremely likely or very likely to participate in the FGB program. The second study took place in February 2001 which was conducted consistent with an on-line interactive questionnaire that generated 606 responses. This study found that consumer interest in the program was 50.8%. He said that the market studies indicated a broad base of appeal across all income, age and gender demographic segments. In addition, younger consumers and middle-income consumers showed the highest interest in the FGB program. After analyzing the 2001 survey, Mr. Goodwin said that NIPSCO immediately implemented internal development of the program.

Mr. Martin testified that the benefits of the FGB program are numerous. First, FGB service is purely voluntary. Second, it is a service by which a customer may individually determine the manner for managing their natural gas bills. Third, it has potential for significantly increasing customer satisfaction by providing the customer the exact amount that will be paid for consumption for a twelve-month period. Fourth, it allows qualifying customers with predictable and weather-sensitive usage to insulate themselves from fluctuation from both the weather and natural gas prices. Fifth, the cost of the program will be recovered entirely from participating customers without subsidies provided by other customer classes. Finally, it is consistent with NIPSCO's Alternative Regulatory Plan ("ARP") which provides customers greater voluntary choices in natural gas energy services.

NIPSCO suggested that the Commission should evaluate the FGB proposal from the perspective of how it fits with the other products and services approved in Cause No. 40342 by the Order issued October 8, 1997. The ARP, as approved, gave NIPSCO flexibility in pricing and marketing to allow NIPSCO to offer certain services and products in a competitive environment. As we stated in the October 8 Order:

The ARP is a platform for Northern Indiana to provide new competitive services to its customers coupled with an unbundling proposal that will give all classes of customer's access to a choice of suppliers. The ARP attempts to balance the interest of Northern Indiana in providing new and different competitive gas supply services against any advantages it may have as a sole provider of bundled services to most of the customers behind its city gate. The ARP represents a unique proposal in that, while it is designed to transition the Company for a deregulated gas supply market, the Commission's jurisdiction will continue and, in some instances, its regulatory oversight will be enhanced. Thus, the ARP is a balanced proposal through which Northern Indiana will unbundle its services and open its market area to increase competition in exchange for the ability to provide new services and price mechanisms better suited to the transitioning market. Customers should be better served in all respects.

(Emphasis added). *Id.* at 77-78.

NIPSCO suggested that the Commission must decide in this proceeding whether the FGB service fits the requirements of Ind. Code 8-1-2.5 and is consistent with, or even enhances the platform created by the previously approved ARP.

→ *CONCLUSION.*

NIPSCO's position with regard to competition is that its own products, such as the Budget Payment Plan, the PPS service, and the "Choice" of gas supply from third-party marketers are competitive with the FGB service and that the service provides simply another, albeit different, tool by which customers can voluntarily choose to manage their gas costs using products that best fit their individual requirements. In particular, customers who put a premium on total gas bill stability as opposed to unit price stability or fluctuating market pricing, will have available FGB service as an

alternative. NIPSCO also argues that participating marketers in its Choice Program also have the option and the opportunity to offer the same service under terms and conditions they deem appropriate. Of course, such offerings are not subject in any way to OUCC or Commission review and approval as proposed by NIPSCO in its FGB service.

Ms. Stafford provided statistical information regarding NIPSCO's Budget Payment Plan, its PPS Program and its Choice Program. She noted that the primary common denominator with these service options is the voluntary choice the customer has in choosing any of these options. She stated that with regard to the PPS and Budget Payment Plan, these services, like the FGB program, are designed to guard against price volatility. However, the FGB product goes further by offering the customer protection against the effect of weather. She stated that for the Budget Payment Plan there are 215,760 customers enrolled as of November 1, 2001. Under the PPS Program, there are 32,744 customers. She said that there were 13,212 customers purchasing their gas supplies from a supplier other than NIPSCO under the Choice Program.

**B. OUCC's Evidence.** The OUCC argued that competition or competitive forces do not exist within NIPSCO service territory to a degree that would permit the Commission to relax its regulation of the proposed FGB service. The OUCC based its position on the fact that approximately 13,000, or fewer than 2% of NIPSCO's gas customers, participate in the Choice Program. Given this lack of customer participation, the OUCC opined that competition as defined historically, does not exist within NIPSCO's service territory.

Mr. Parsell asserted that NIPSCO has been too busy trying to successfully market its own products while erecting barriers to entry for third-party marketers. In particular, he cited the FGB service offering as a barrier to entry. Mr. Parsell supported this statement with a January 17, 2002 letter from Mr. Kevin Stoffer, President and CEO of NiCOR Energy (Public Ex. MPG-2). In his letter, Mr. Stoffer compared the offering of the FGB service to the offering of NIPSCO's PPS as proposed in the ARP settlement. Mr. Stoffer complained that PPS and FGB will use utility billing to promote the programs and utility employees and assets to administer and market the programs. He stated that unless the costs are properly allocated, the regulated rates will bear the cost of the program while the rewards will be reaped by the shareholder. In Mr. Stoffer's opinion, it is unreasonable for a regulated utility to offer a completely unregulated product. Without being specific, Mr. Stoffer claimed that NiCOR could offer all of the service options being offered by NIPSCO if "barriers of the program are removed." He also noted that NiCOR is at a competitive disadvantage because it does not have the ability to subsidize its efforts with ratepayer-funded utility functions.

The OUCC challenged NIPSCO's claim that competition justified the offer of the FGB program. Many of the competitors of the FGB program would be alternative programs offered by NIPSCO itself. The OUCC argued that no weight should be given to such "intra-utility" competition. The OUCC pointed out the following facts about NIPSCO's residential gas market: (1) NIPSCO has operated under a customer choice plan since 1997; (2) NIPSCO supplies nearly 99% of all commodity sales to residential

customers in its territory; (3) NIPSCO supplies 100% of all residential natural gas distribution (i.e. delivery) service in its territory; and (4) only one surviving marketer/alternative supplier (i.e., NICOR) continues to accept new residential service applications.

Mr. Parsell testified that the NIPSCO Choice program provides the only source of external competition to NIPSCO's natural gas products [Pub. Exh. MGP-1, p. 3, line 11]. He argued that the intra-company competition touted by NIPSCO was at best a very dubious substitute for actual competition between alternative suppliers. [Pub. Exh. MGP-1, p. 3, lines 15-17]. Mr. Parsell also emphasized that only 1.6% of NIPSCO's residential customer base is currently participating in the Choice program.

Mr. Parsell also testified that the proposed FGB program bears an important relationship to the NIPSCO Choice and Monthly GCA. For example, FGB is a rate stability program designed to appeal to those customers who seek to avoid the instability created by monthly GCA filings. He further stated that the NIPSCO Choice program ". . . was the first step toward unbundling and small customer choice in Indiana." [Pub. Exh. MGP-1, p. 5, lines 9-10]. The PPS program was developed to give NIPSCO both an additional service offering and the opportunity to compete in the deregulated market. The Monthly GCA was also a result of the Choice program; it was designed to allow NIPSCO some of the flexibility in pricing enjoyed by third party marketers.

Mr. Parsell testified that the competition hoped-for in the Choice program has simply not emerged. [Pub. Exh. MGP-1, p. 6, lines 16-17]. For example, not a single alternative supplier offers an FGB type of service to compete with NIPSCO's proposed FGB service. Thus, the use of competition or market forces to, in effect, regulate such pricing programs cannot work effectively at such low levels of competition. [Pub. Exh. MGP-1, lines 22-24]. Mr. Parsell stressed the current level of competition in NIPSCO's small customer market is simply not adequate to justify Commission declination of jurisdiction over the FGB program or Program Fee. The best evidence supporting this view is NIPSCO's undisputed 98.4% market share of residential natural gas commodity sales. Also, only one competitor (NICOR) is accepting new applications and it may be forced to exit altogether under NIPSCO's proposal. [Pub. Exh. MGP-1, p. 8, lines 9-11 and Pub. Exh. MGP-2]

Contrary to the company's insistence that competition exists in its service area, Mr. Parsell stated, "The facts of the Choice program establish that there is no real competition, especially in the residential customer segment . . ." [Pub. Exh. MGP-1, p. 7, lines 16-17]. Mr. Parsell also disagreed with the company's assertion that its other service offerings comprised "competitive forces" sufficient to protect ratepayers and justify declination of jurisdiction. Mr. Parsell stressed that the Commission should examine FGB in the context of these other NIPSCO offerings because that are all interrelated. These product offerings include GCA sales service, Budge Bill service and the PPS service. NIPSCO's proposal FGB program would add a service aimed at that segment of the market most willing to pay for price stability.

Mr. Parsell testified that NIPSCO's premise of competitive market pricing of FGB is misleading because the only real alternatives are offered by NIPSCO. Indeed, the competition hoped for in Cause Nos. 40342 (Choice ARP) and 41338 (monthly GCA) has simply not emerged. Mr. Parsell testified it would be inappropriate to introduce another deregulated service into this very non-competitive market. He further testified that the OUCC is not opposed to FGB in principle, but rather to the proposed price deregulation in such a non-competitive market.

Mr. Parsell further testified that the company's proposed unlimited Program Fee is totally unreasonable, citing the regulated fees on similar FGB services in Kansas and Minnesota. Neither Kansas Gas nor Reliant Energy Minnegasco, who have similar contracts with Weatherwise, have been allowed the profit potential that NIPSCO proposes with its unlimited fee.

Mr. Lorton testified about the market structure in NIPSCO's service territory. Referencing several treatises that define competition as a market in which there are many firms offering substantially the same product, where no firm has an advantage over the other, where there is a free flow of information and where there are no barriers to entry and exit from the market, he testified this scholarly definition of competition provides an important standard (or yardstick) by which to evaluate the level of competition in a given market. Mr. Lorton testified that NIPSCO used a completely different definition of "competitive forces" in its case-in-chief, which is not supported by any scholarly treatise. Most notably, NIPSCO errantly argues that intra-company competition (or NIPSCO's competition with itself) will suffice to protect ratepayers against unfair, predatory or monopolistic actions or inactions by NIPSCO, and therefore NIPSCO's self directed and self serving competition justifies Commission declination of jurisdiction, permitting NIPSCO to merrily proceed without regulation.

Mr. Lorton also provided a definition of "monopoly" as a market with a single firm selling a product with no close substitutes, with no free flow of information and where substantial barriers to entry exist. He provided a definition of "imperfect competition" which has two main variants, "monopolistic competition" and "oligopoly."

Mr. Lorton testified that NIPSCO's small customer, retail gas market is highly monopolistic. For NIPSCO clearly has a monopoly on natural gas distribution in its service territory. Further, NIPSCO is a monopolistic public utility supplier of electricity, and electricity is a primary substitute for natural gas service. He refuted Mr. Goodwin's testimony about NIPSCO's theory of intra-company competition by saying: . . . merely offering the same commodity with a choice of different terms from the same company does not constitute competition. [Pub. Exh. BEL-1, p. 11, lines 18-20].

Mr. Lorton utilized data supplied by Ms. Stafford to demonstrate the exceptionally low participation rate in the NIPSCO Choice. In terms of the gas commodity, NIPSCO supplies 98.4% of residential customers in its area, and 92.0% of commercial customers. The Choice marketers "share the leftovers" on commodity sales, but only one Choice marketer currently accepts new residential customers. Again, not a

single marketer offers FGB service to residential customers. NIPSCO would thus start with a complete monopoly on FGB service. NIPSCO also has a complete monopoly on natural gas distribution (i.e. delivery service) in the small customer segment.

Mr. Lorton could find no evidence to suggest that a sufficient level of competitive forces exist in the NIPSCO service area to protect customers from monopolistic pricing. The company has asked for a percentage add-on to the FGB bill that would be without limitations, oversight, or effective competition. If the FGB program were implemented in the proposed form the company will be able to act as an unrestrained monopolist in this offering. [Pub. Exh. BEL-1, p. 18, lines 10-13].

The OUCC also claimed there was a lack of full disclosure by NIPSCO. For example, the company relegated explanations of important pricing issues to the back pages of its proposed telemarketers' script. This information would only be available to customers if they ask the right questions. None of this information is offered in the direct education and marketing materials that NIPSCO proposed to send to customers. [Pub. Exh. BEL-1, p. 23, lines 7-10]. One notable problem is the Program Fee is listed as a hypothetical dollar amount, with no percentage cited, on a sample FGB bill in the enrollment materials. No explanation of this fee is provided and if the customer were to ask what this fee is, the telemarketing script would provide a highly misleading explanation. The fact that the customer risks significantly higher gas bills than GCA service customers during warmer than normal years is omitted from any of the educational materials that would be sent to the customer.

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Mr. Lorton concluded that important information impacting the customer, about the program was not readily available in the current state of the educational / marketing materials. He recommended the OUCC should have input into, and the Commission should have oversight of the content, and provision of such materials.

Much of the dispute on the full disclosure issue centers on the elements of the customer's bill as they are portrayed in the educational materials. Two major elements were mentioned, one, the amount that the customer will be paying for hedging costs, the other, the description of the Program Fee. Mr. Lorton made note of the fact that the "indicative" pricing model provided by the company estimated a cost of about \$1.00 per dekatherm [Pub. Exh BEL-1, p. 18, lines 24-25], and that this cost is not spelled out in the educational materials. Ms. Stafford countered that explaining the cost of options would confuse customers. In its proposed order, the OUCC gave two reasons why it is important to disclose this information in the educational materials: (1) In the current market for gas the indicative model's amount for hedging costs would represent a very high percentage of the actual cost of the commodity, likely between 25% and 50% of commodity costs; (2) in the company's script for FGB telemarketers, the company supplies an answer to questions about the Program Fee that would lead the customer to believe that hedging costs are covered by the Program Fee [Pub. Exh. BEL-7, p. 12, Answer to Question 20].

The OUCC argued that when this fee is charged beyond the minimum volume of gas sales, it represents a risk premium (Mr. Walker referred to these as "option premiums") imbedded in this program. This appeared to the OUCC to be at some odds with Mr. Goodwin's observation that "There will not be any risk premiums built into the calculation of the expected usage curve." [Pet Rebuttal Exh TEG-1, p. 4, lines 15-17]. To the OUCC, it seemed reasonable for the customer to be made aware that a significant percentage of the commodity costs being billed will be for risk mitigation and risk premium.

The OUCC had a number of other criticisms of the FGB program which we will now briefly summarize: (1) There were several alleged inconsistencies between the Company's explanation of the Program Fee in the telemarketing script and other testimony offered in this Cause. (2) The Company should disclose that in a warmer-than-normal year, the customer would be paying for gas that he would not be using or consuming. At that point, the per-unit price of gas in the fixed agreement would represent nothing but profit to the company. Moreover, the customer would have a total gas bill for the year that would be higher – and in some cases significantly higher – than had that customer remained on standard tariff service. (3) The Company should explain how the customer's fixed bill will be calculated, and should also break out the gas commodity cost and the hedging / options premium. (4) Customers should be given the ability to make comparisons of their fixed bills with other billing options. (5) The Company's educational and marketing should be closely supervised. (6) The pricing of the FGB program may provide the company with profit potential enough to cover any program risks prior to the imposition of the Program Fee. This profit potential centers around the application of an "options premium" which may reach as much as \$1 per dekatherm in the customer quotes. According to the pricing methodology the purchase of options would be covered by program revenues based on the minimum enrollment and customer gas usage projections. This minimum enrollment is guaranteed by Weatherwise. However, this options premium will be billed on every dekatherm up to the expected usage for each customer. Thus, in the range between the minimum and expected gas usage, this options premium will be profit to the company. With the expected gas usage based on "normal weather" it can be reasonably deduced that over the long run the company will realize substantial profits on commodity in addition to any profit earned on local distribution.

C. Commission Findings. Of the four criteria listed in IC 8-1-2.5-5 for evaluating the public interest, the evidence of the parties focuses primarily on the first criterion - whether competition and competitive forces require the approval of the FGD Program. The evidence from Ms. Stafford was that approximately 260,000 customers are now enrolled in alternatives to the standard GCA-regulated gas service. The OUCC countered that only 13,000 customers, or fewer than 2% of NIPSCO's gas customers, purchase gas from a supplier other than NIPSCO under the Choice program. The OUCC argued that this figure is too low to support a finding that true competition exists for retail gas services. The OUCC further suggested that the low participation rate in the Choice Program was the result of barriers erected by NIPSCO to impede its competitors.

NIPSCO suggested the figure was low because NIPSCO's gas acquisition practices are excellent and it is difficult for a competitor to deliver a better price.

For purposes of this proceeding, it is not necessary for the Commission to determine why participation rates in the Choice Program are as low as they are. All that is necessary is to evaluate the statutory criteria to determine whether the public interest "requires" that the Commission either decline to exercise its jurisdiction or otherwise approve the adoption of the FGB program. From the evidence presented, the Commission finds that the level of competition presented by other gas suppliers under the Choice Program and other intra-company alternatives approved by this Commission in Cause No. 40342 does not rise to the level necessary to support a finding that the public interest would be served by either declining jurisdiction or approving an alternative regulatory procedure. This is not to say that the Choice Program does not offer some competition to NIPSCO's gas services. It does offer some competition, but not enough to support a favorable finding under IC 8-1-2.5-5(b)(1).

We turn now to the second criterion, which asks whether approval of a proposal will be beneficial for the energy utility, the energy utility's customers, or the state. The survey conducted by NIPSCO to assess consumer interest in an FGB Program indicated there was significant interest by those surveyed. Because there appears to be a significant demand for a fixed-bill product by NIPSCO customers, the Commission finds that permitting the offer of a fixed-bill product would benefit the utility's customers, and therefore could be in the public interest, if such a product were properly designed and marketed. The Commission does not doubt that there may be customers who have the ability to pay a higher amount for the convenience and certainty of a fixed gas bill, and who have their reasons for doing so. Those reasons could include a desire to avoid unusual price spikes like those experienced in the winter of 2000-2001, or could be as simple as a desire to precisely budget their gas bills. The Commission notes that in the highly competitive long-distance telephone market, billing options now include flat monthly rates. There is no reason to believe that a similar product wouldn't appeal to purchasers of gas services, and the Commission sees no reason why a fair program should not be approved.

With regard to the third and fourth criteria, the Commission notes that no evidence was presented by either party on the third criterion, i.e., whether approval would promote energy utility efficiency. With regard to the fourth criterion, whether approval would enhance the utility's competition with other providers of functionally similar services, the Commission finds that insufficient evidence was presented to support such a finding.

One of the OUCC's arguments against approval of the FGB program was that NIPSCO is a monopoly, and without full Commission regulation of the FGB program, monopoly profits might result – to the detriment of customers of the FGB program. The Commission believes that as long as customers are fully informed of the consequences of enrolling in the FGB program, they should be allowed to make their own choices. We do not subscribe to the OUCC's argument that because NIPSCO is a monopoly it will be

able to collect monopoly profits from its FGB program. Although NIPSCO is a monopoly, it is a regulated monopoly, and regulation is traditionally viewed as a proxy for competition. Thus, even though the FGB program will be offered by a monopoly, and will be in competition with that same monopoly, the regulations that control the prices of the monopoly's regulated services should serve as a check on the price that the monopoly can charge for a deregulated FGB service. Thus, while NIPSCO's FGB program may charge "what the market will bear," the amount the market will bear will be influenced by comparison to a regulated, and not a monopoly, price. By requiring a direct comparison of the relative costs of the FGB program, the budget billing program and the standard tariff, it should be possible for customers to make a meaningful decision on the price they are being asked to pay for the convenience and certainty of a fixed monthly bill. The findings below are designed to ensure that customers are fully informed of the consequences of enrolling in the FGB program.

6. **Modifications to the FGB Program.** After reviewing the provisions of the FGB Program as conveyed by NIPSCO's witnesses and marketing materials, and after considering the OUCC's criticisms, the Commission finds that it would not be in the public interest to approve the FGB Program unless it is modified as indicated below. The Commission understands that pursuant to IC 8-1-2.5-6(e), NIPSCO does not have to agree to the proposed modifications, and must indicate within 20 days of the date of this Order, in writing, whether it agrees to the proposed modifications.

The Commission finds that if Petitioner agrees to the proposed modifications set forth below, it will be in the public interest for Petitioner to be allowed to offer such modified FGB Program for a trial period of three (3) consecutive Program years. If Petitioner desires to extend the term of the Program beyond the three-year trial period, Petitioner should file a petition twelve months prior to the expiration of the trial period.

If Petitioner agrees to the proposed modifications, the Commission finds that Petitioner should consolidate all of the modified and unmodified provisions of the Program into a "Program Description" that will serve as the definitive description of the FGB Program. The Commission finds that Petitioner should not be permitted to make any solicitations until: (1) the Program Description has been filed; (2) the Consumer Affairs Division has approved solicitation materials (see below); and (3) the Commission's Electricity Division has approved an FGB tariff.

The proposed modifications are as follows:

(1) NIPSCO (and Weatherwise) should submit all educational, solicitation and marketing materials, including customer disclosures, telemarketing scripts and media materials, for prior approval by the Commission's Consumer Affairs Division.

All educational, solicitation and marketing efforts should stress the following message:

You should not buy this product with the expectation of saving money. You should only buy this product if you are interested in a fixed monthly bill (with no year-end true-up), and if you are willing to pay a surcharge for that feature. You are advised that in a warmer than normal year, or in a year when gas prices are lower than expected, you will likely pay considerably more under the FGB Program than you would pay under the standard tariff.

Petitioner's testimony indicated it would not be marketing the FGB Program as a means of saving money, and the Commission notes that Petitioner presented no evidence at the hearings in this Cause to support such a claim. Petitioner did submit, at the bench's request, a 30-year analysis that seemed to indicate it was possible to save money in some instances. The OUCC's filing in response challenged the underlying assumptions of that analysis. The issue is not settled, and Petitioner at this time has yet to prove that it is possible for an FGB customer to save money under any set of circumstances. Therefore, the Commission finds that NIPSCO should not make any direct or indirect representations to its customers that money could be saved by enrolling in the FGB Program. If requested, the Commission will convene a hearing on this issue to determine whether it is possible for a customer to save money under the FGB Program, and if so, the likelihood of such a possibility. Following such a determination, Petitioner would be permitted – and may even be required – to disclose the likelihood of saving money.

(2) As part of its solicitation materials for the initial year of the FGB Program, NIPSCO shall provide to each prospective customer a three-column comparison of the monthly and annual costs for gas service under the FGB Program, under budget billing, and under the standard tariff. The following format should be used:

	FGB Program 2002-2003 Guaranteed	Budget Billing 2002-2003 Estimated	Standard Tariff 2001-2002 Actual
Monthly Comparison			
Annual cost			

In year two of the FGB Program and thereafter, NIPSCO shall provide to each prospective and renewing customer a five-column comparison using the following format:

	FGB Program 2003-2004 Guaranteed	Budget Billing 2003-2004 Estimated	FGB Program 2002-2003 Actual	Budget Billing 2002-2003 Actual	Standard Tariff 2002-2003 Actual
Monthly Comparison					
Annual cost					

(3) The FGB price quoted to a prospective FGB customer shall include the following information:

Gas Supply Charges	\$xx.xx
Gas Delivery Charges	
Interstate Pipeline Charges	
Program Fee	
Sales Tax	_____
Total	

(4) The initial enrollment of a customer may only be effected by a written signature from the customer, and only after the customer has been provided the disclosures set forth in Paragraphs (1) and (2) above. A customer's enrollment may be renewed automatically, but only if the monthly price to be paid under the FGB Program is equal to, or lower than the price paid in the previous year, and only after providing the five-column comparison described earlier.

(5) Petitioner shall provide a detailed explanation to the Commission and the OUCC of the manner in which the Program Fee is calculated. The calculation of the annual Program Fee shall not be based on the GCA variance to be paid by the customer from prior years. As indicated later below, the Program Fee is capped at 4% for Weatherwise and at 6% for NIPSCO.

(6) Petitioner shall prepare and submit a description of the courses of action it plans to take with regard to participants whose gas usage exceeds by 15% the amount projected by Weatherwise. Petitioner shall clarify whether the 15% excess usage figure is computed based on a running total for the year, or is computed on a monthly usage basis. The proposed courses of action will be reviewed by the Commission's Consumer Affairs Director, and NIPSCO shall make any suggested modifications.

(7) The Commission will retain full jurisdiction over FGB customer disputes. If disputes are not resolved to a customer's satisfaction, the Commission's Consumer Affairs Division should be contacted and informed of the dispute. If appropriate, the Consumer Affairs Division will have the authority to waive Program exit fees, and if warranted by deficiencies in the initial solicitation, may also waive any Program costs in excess of the standard customer tariff. NIPSCO shall record all telemarketing conversations and shall make them available to the Commission upon request.

(8) NIPSCO shall retain contracts and other records detailing its gas supply acquisition practices for the FGB Program, including the actual dollar amounts and hedging costs for fixed-price volumes and fixed-price variable volumes for all gas purchased for FGB participants. These records shall be made available to the Commission and the OUCC upon request.

(9) Within two (2) months of the close of a Program year, Petitioner shall file with the Commission the following:

- (a) A Financial Report detailing the costs and revenues from the Program;
- (b) A Participation Report indicating (i) the number of customers enrolled in the Program, (ii) the number of customers who voluntarily exited the Program during the Program year and the exit fees that were assessed and paid, (iii) the number of customers who involuntarily (i.e. due to excess usage or arrearages) exited the Program, the reason why, and the exit fees that were assessed and paid, (iv) the number of customers who re-enrolled for the following year's Program, and (v) the number of customers who declined to re-enroll.

7. **Declination of Jurisdiction.** Petitioner has specifically requested that the Commission waive its jurisdiction pursuant to the provisions of IC 8-1-2.5-5 for the limited purpose of permitting NIPSCO to vary the Program Fee provided to the customer under the FGB service. As explained above, the Program Fee proposed for the initial offering of the FGB Program is set at 10% (comprised of a 4% fee to be paid to Weatherwise, and a 6% administration fee to be paid to NIPSCO). In subsequent years, NIPSCO has requested that it be permitted to adjust this Program Fee without Commission supervision or regulation. IC 8-1-2.5-5(b) lists four criteria the Commission must consider in determining whether the public interest would be served by the Commission agreeing to decline to exercise its jurisdiction in whole or in part.

A. **Petitioner's Evidence.** Throughout this case, Petitioner has continually insisted that it is only seeking the declination of Commission jurisdiction over the Program Fee. In its initial proposal, Petitioner indicated the Program Fee would be capped at 10%. In its supplemental testimony, Petitioner sought the removal of any cap on the Program Fee. Later, at the hearing, Petitioner again indicated its willingness to cap the Program Fee at 10%.

Mr. Martin stated that there was no need to cap a Program Fee because the gas marketplace can accurately determine the price for the FGB service. If NIPSCO establishes a Program Fee that causes this service to be non-competitive and of no interest to NIPSCO's eligible customers, then the customers will not choose FGB service. He noted that this is a similar process utilized by marketers in participating in NIPSCO's Choice Program. These marketers are not constrained by a cap on their margin when establishing a price to offer customers. He also noted that NIPSCO's PPS Program does not contain a cap. Mr. Martin stated that for the first year of the program, the Company will establish an overall Program Fee at 10% with 4% being paid to Weatherwise. In subsequent program years, NIPSCO will notify the Commission in advance of the Program Fee to be assessed. Mr. Martin stated that a fluctuated Program Fee is appropriate because competitively priced/flexible similar services are available to

NIPSCO customers from alternative gas suppliers or from NIPSCO. In his opinion, the offer of competitive-priced optional services is beneficial to NIPSCO's customers and NIPSCO so declining jurisdiction over the Program Fee would be in the public interest.

B. **OUCC's Evidence.** The OUCC expressed concern that during the evidentiary hearing, Mr. Martin could not answer questions posed about what regulatory recourse would be available if the Program Fee was improperly established. The OUCC notes that NIPSCO requests declination of jurisdiction over the program fee and provides no means to challenge an arbitrary or improper fee level. In a market with robust competition, the OUCC suggests this would be quite acceptable. However, because NIPSCO is a regulated natural monopoly almost devoid of competition, the OUCC believes that failing to regulate the Program Fee could lead to a fee that is based nearly on "what the market will bear."

In addition to its concerns about the Program Fee, the OUCC also questioned NIPSCO's decision to request only declination of jurisdiction over the Program Fee. The OUCC suggested that Petitioner should also be requesting a declination of jurisdiction over its purchase practices for commodity gas for FGB customers and for its request that profits and losses from the FGB program be treated "below-the-line," that is, should be attributed solely to the shareholders and not to ratepayers. With regard to commodity gas acquisitions, the OUCC notes that the company plans to fix its own charges for commodity gas costs without specifying any procedural due process in terms of notice, review, hearing or customer right to complain. The OUCC notes that commodity gas costs typically account for more than 50% of a customer's gas bill, and the IURC clearly has jurisdiction over charges for commodity gas costs. The OUCC believes that NIPSCO should be asking the Commission to decline jurisdiction over commodity gas costs. With regard to the treatment of profits and losses from the FGB program, the OUCC also believes that NIPSCO should be requesting Commission declination over the revenues and expenses of the program. The OUCC stated that putting all or part of FGB revenues, expenses (and earnings) below the line seriously implicates the Commission's overall jurisdiction over FGB service – not just its jurisdiction over the Program Fee. The OUCC points out that a below-the-line treatment would exclude FGB earnings from the earnings test under I.C. 8-1-2-42(g)(3). The OUCC suggested that failing to request Commission declination over the revenues and expenses of the FGB program is a legal defect.

C. **Commission Findings.** Commission jurisdiction over the Program Fee can be relinquished if it is in the public interest, based on the criteria set forth in IC 8-1-2.5-5(b). The Commission earlier determined that the public interest supported the approval of Petitioner's FGB Program with the modifications set forth in this Order. Just as it would be in the public interest to approve the FGB Program, as modified, the Commission finds that it would also be in the public interest to approve the partial relaxation of jurisdiction over Petitioner with regard to the Program Fee. Therefore, the Commission finds that Petitioner should be permitted to vary the Program Fee as it chooses, without prior Commission approval, as long as the Program Fee for Weatherwise does not exceed 4% of the total customer cost of the program, and as long

as the Program Fee for NIPSCO does not exceed 6% of the total customer cost of the program. The OUCC expressed concern that the Program Fee might be based in part on a customer's GCA variance for the prior year. As indicated earlier in this Order, we find that the computation of the Program Fee should in no way be based on a customer's obligation to pay a GCA variance for a prior year. The OUCC was also concerned that other costs of the program, unless subjected to Commission scrutiny, could contain hidden fees and surcharges and mark-ups that would in effect boost the Program Fee above whatever amount is being disclosed to the customer. The Commission finds that NIPSCO should pass through all non-Program Fee costs without any mark-up, surcharge or other profit enhancement.

The OUCC complained that NIPSCO should have sought a declination of jurisdiction over gas commodity costs for gas to be supplied pursuant to the FGB Program, and suggested that NIPSCO could profit handsomely if the lock-in price for commodity gas is much higher than the spot price for gas during the term of the Program. The Commission is aware that NIPSCO could potentially reap significant profits on the difference between the locked-in hedge price and the spot market price of gas. However, it is also possible that NIPSCO could lose money. There is considerable uncertainty surrounding the valuation of the risks being undertaken by NIPSCO in the FGB Program, and whether the potential profit that NIPSCO stands to gain (which includes its portion of the 10% Program Fee) is commensurate compensation for that risk. No evidence was presented by either party on whether the 10% return represented by the Program Fee appropriately compensated NIPSCO and Weatherwise for their risk exposure. However, it is not necessary for the Commission to determine the fairness of the return that those entities should receive for the risk they incur in offering the FGB Program because the program is not intended to be sold as a risk mitigating product. It is instead being sold as a convenience, and thus for the customer, the appropriate information is the price that is to be paid, along with a breakdown of the fees, and the ability to make a fair comparison to other alternatives.

Because NIPSCO is securing gas supplies for its FGB customers on a stand-alone basis, entirely separate from the gas acquisition for GCA customers, there is no possibility that regulated GCA customers will subsidize unregulated FGB customers. The Commission is therefore satisfied that regulation of NIPSCO's FGB gas acquisition practices is not necessary to prevent the subsidization of FGB customers by GCA customers. With regard to the reasonableness of the gas acquisition costs, the Commission notes that NIPSCO's ability to treat revenues below the line (see below) should motivate NIPSCO to obtain the best commodity gas price available, so as to attract as many customers as possible to its FGB program. The Commission further notes that pursuant to determinations made above, Petitioner is not permitted to include within its commodity gas costs any markup or other profit, but must instead pass that cost directly through to its FGB customers. To foil any potential for collusion, the Commission finds that NIPSCO should fulfill its commodity gas needs for the FGB program only with unaffiliated suppliers and only through arms-length transactions. Finally, the Commission notes that the reporting requirements listed earlier should serve as a check on the reasonableness of NIPSCO's FGB purchase practices.

Although NIPSCO did not specifically request Commission declination of jurisdiction over NIPSCO's purchase of commodity gas for the FGB Program, the Commission finds that such declination is appropriate to the extent necessary to implement the modified FGB Program approved herein. The Commission notes that the public interest standard for both Section 6 and Section 5 is identical, and thus a finding that a Section 6 alternative regulatory proposal is in the public interest and should be approved carries the implication that Commission jurisdiction should be declined to the extent necessary to implement that alternative regulatory proposal. The OUCC was on notice of the procedures NIPSCO intended to follow when purchasing gas for the FGB Program. Thus, any failure by NIPSCO to specifically request declination of jurisdiction under Section 5 would at most be a technical error, and under the facts of this case, we find any objection based thereon to be without merit.

With regard to the OUCC's claim that Petitioner should have requested declination of jurisdiction over the treatment of FGB revenues and expenses, the Commission again notes that the same statutory standard for approval of the FGB program is applied when declining jurisdiction. Thus, presumably, approval of the FGB Program includes a commensurate declination of jurisdiction over the component parts of the Program. With regard to the OUCC's concern that NIPSCO will be avoiding the inclusion of FGB earnings in the earnings test under I.C. 8-1-2-42(g)(3), the Commission is aware of the import of our approval of the FGB program, but has decided that below-the-line treatment is appropriate. The Commission notes that the FGB program is a double-edged sword: it can either be profitable or lose money. If FGB expenses and revenues were treated above the line, there would be a risk that ratepayers might ultimately be responsible for losses of the FGB program. In order for the Commission to approve any program whose cost might ultimately be borne by ratepayers, the Commission would want to bring to bear its full regulatory authority to explore all costs of the program. Given that the purpose of the FGB program is not to provide a low-cost product but is instead to provide a convenience, and because the utility will likely incur significant expenses in setting up the program and running it, it appears reasonable to the Commission to give the utility the added incentive of being able to treat program expenses and revenues below the line so that the utility can reap the benefits (or losses) of its efforts.

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

1. NIPSCO's FGB Program shall be and hereby is approved, with the modifications set forth in Finding Paragraph Nos. 6 and 7.
2. Within twenty (20) days of the date of this Order, NIPSCO shall indicate, in writing, whether it accepts or rejects the modifications to the FGB program set forth in Finding Paragraph Nos. 6 and 7.

3. If NIPSCO accepts the modifications proposed herein, the modified FGB program shall be deemed approved for a trial period of three (3) consecutive Program years.

4. If NIPSCO accepts the modifications proposed herein, NIPSCO shall file a "Program Description" as required in Finding Paragraph No. 6, and shall submit all educational, solicitation and marketing materials for prior approval by the Commission's Consumer Affairs Division.

5. If NIPSCO accepts the modifications proposed herein, NIPSCO shall file tariff sheets consistent with this Order that shall become effective upon the approval of the Commission's Gas/Water/Sewer Division.

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

**McCARTY, HADLEY, RIPLEY, SWANSON-HULL AND ZIEGNER CONCUR:**

**APPROVED: JUL 03 2002**

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



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Pamela K. White  
Acting Secretary to the Commission