

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

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APR 29 2009

PETITION OF THE BOARD OF DIRECTORS)
FOR UTILITIES OF THE DEPARTMENT OF)
PUBLIC UTILITIES OF THE CITY OF)
INDIANAPOLIS, AS SUCCESSOR TRUSTEE OF)
A PUBLIC CHARITABLE TRUST, D/B/A)
CITIZENS THERMAL, FOR APPROVAL OF A)
POWER PURCHASE AGREEMENT WITH)
INDIANAPOLIS POWER & LIGHT COMPANY)

CAUSE NO. 43642

APPROVED:

APR 29 2009

BY THE COMMISSION:

Gregory D. Server, Commissioner
Lorraine Hitz-Bradley, Administrative Law Judge

On February 11, 2009, the Board of Directors for Utilities of the Department of Public Utilities of the City of Indianapolis, as Successor Trustee of a Public Charitable Trust, D/B/A Citizens Thermal ("Petitioner" or "Citizens") filed with the Indiana Utility Regulatory Commission ("Commission") its Petition in this Cause requesting the Commission to find reasonable and approve a First Amendment to Power Purchase Agreement (the "First Amendment") between Petitioner and Indianapolis Power & Light Company ("IPL"). The First Amendment addresses an agreement between Petitioner and IPL that was approved by the Commission on March 22, 2007, in Cause No. 43117.

Pursuant to notice and as provided for in 170 I.A.C. 1-1.1-15, a Prehearing Conference was held in this Cause in Room 224 of the National City Center, 101 West Washington Street, Indianapolis, Indiana, at 10:00 a.m. on March 13, 2009. Proof of publication of notice of the Prehearing Conference was incorporated into the record and placed in the official files of the Commission. Counsel for Petitioner and the Indiana Office of Utility Consumer Counselor ("OUCC" or "Public") appeared and participated in the Prehearing Conference. On March 25, 2009, the Commission issued a Prehearing Conference Order, which set forth certain determinations with respect to the conduct of this Cause based upon the agreement of Citizens and the OUCC at the Prehearing Conference.

On March 20, 2009, Petitioner prefled its prepared case-in-chief consisting of the verified testimony and exhibits of Robert R. Purdue. On April 6, 2009, the OUCC prefled its prepared case-in-chief consisting of the verified testimony and exhibits of Stacie R. Gruca.

Pursuant to notice as provided by law, proof of which was incorporated into the record and placed in the Commission's official files, a public evidentiary hearing was commenced on April 13, 2009, at 11:00 a.m. in Room 224, National City Center, 101 West Washington Street, Indianapolis, Indiana. At the hearing, the prefled testimony

and exhibits described above were admitted into the record with no objections. The Petitioner and the OUCC appeared and participated in the evidentiary hearing. No members of the general public appeared or otherwise sought to testify.

Based on the applicable law and the evidence of record, the Commission now finds:

1. **Notice and Jurisdiction.** Notice of the public evidentiary hearing held on April 13, 2009, was given as required by law. Petitioner is a municipal steam utility subject to the jurisdiction of this Commission in the manner and to the extent provided by the laws of the State of Indiana, including certain sections of the Public Service Commission Act, as amended. The Commission has jurisdiction over the parties and the subject matter of this proceeding.

2. **Petitioner's Steam Business.** Citizens is a municipal steam utility that maintains its principal offices and provides steam service in Marion County, Indiana. It owns, operates, manages and controls plant and equipment used for the production, distribution and furnishing of steam utility service to the public. Citizens provides steam service to approximately 220 customers in the City of Indianapolis through steam production and distribution facilities purchased in November 2000 from IPL. Citizens' purchase of those facilities from IPL was approved by this Commission in its October 4, 2000, Order in Cause No. 41716.

3. **Petitioner's Testimony.** Mr. Robert R. Purdue, Petitioner's Director of Steam, testified in support of the First Amendment. Mr. Purdue explained that as part of Citizens' acquisition of the Perry K steam production plant and other thermal energy assets from IPL in November 2000, Citizens and IPL entered into an "Electricity Contract," the purpose of which was to allow Citizens to continue utilizing the Perry K plant's electric generating units in basically the same way IPL utilized those units prior to the acquisition. Prior to the acquisition, IPL utilized one of the electric generating units (the "House Turbine") to generate electricity used to provide internal power for the Perry K plant. Citizens continues to use the House Turbine to produce power used internally at the Perry K plant. The other electric generating unit ("Unit No. 4") was used by IPL to generate electricity for its electric distribution system.

Mr. Purdue testified that the Commission, in its October 4, 2000, Order in Cause No. 41716, approved the Electricity Contract, finding its rates, charges, terms and conditions reasonable. Additionally, the Commission declined to exercise certain jurisdiction over Citizens' sales of electricity to IPL. Specifically, the Commission exempted Citizens' operation of Unit No. 4 to generate electricity to be sold to IPL from any certificate of need requirements. That exemption was conditioned on Citizens' continued operation of Unit No. 4 at no more than 10 MW.

Mr. Purdue stated that the Electricity Contract was replaced by a Power Purchase Agreement (the "PPA"), which was approved by the Commission in Cause No. 43117 in March 2007. He explained that the term of the PPA expired on November 19, 2008, and

that at the time of the expiration of the PPA, no succeeding agreement had been reached. Citizens and IPL subsequently entered into the First Amendment, which is an amendment of the PPA.

Mr. Purdue then explained how the First Amendment alters the terms of the PPA, stating that the First Amendment makes minimal changes to the PPA. Under the original PPA, IPL paid one price for "Normal Generation", which is defined in the PPA as "the output of the [Unit No. 4] Generator as metered by IPL, excluding all Dispatch Generation." IPL paid a higher price for "Dispatch Generation", which is defined in the PPA as "the output of [Unit No. 4] as metered by IPL during a Dispatch Period." The First Amendment (a) changes the rate IPL will pay for Normal Generation to \$0.017/kWh; (b) allows either party to terminate the PPA upon three months' notice (as opposed to 12 months' notice under the original PPA); and (c) extends the term of the PPA to November 19, 2011.

Mr. Purdue then described the benefits of continuing the PPA. He stated that Citizens does not operate the No. 4 turbine on a significant or frequent basis, which will continue to be the case. There are limited circumstances, however, such as the use of excess Covanta¹ steam production beyond what is needed for Citizens Thermal's steam system, which can trigger the operation of Unit No. 4. Mr. Purdue testified that Citizens' ability during those circumstances to sell to IPL electricity generated with Unit No. 4 offers significant benefits to both parties, including, for example, preventing the waste of excess steam that can be used to generate electricity with Unit No. 4.

Finally, Mr. Purdue stated that the rates and charges set forth in the First Amendment exceed the variable cost of generating electricity sold to IPL, and therefore the First Amendment's rates and charges will not only allow Citizens to recover its incremental costs of generating electricity sold to IPL, but also will provide a contribution to the recovery of Unit No. 4's fixed costs.

4. Public's Testimony. Stacie R. Gruca, a Utility Analyst employed by the OUCC in its Electric Division, testified on behalf of the Public. Ms. Gruca presented an overview of the PPA, described the changes the proposed First Amendment would make to the PPA, discussed the benefits of continuing the PPA for an additional three years, and recommended approval of the amended PPA.

Ms. Gruca agreed with Mr. Purdue's description of the impact that the proposed First Amendment would have on the PPA approved in Cause No. 43117. First, the proposed amendment would increase the rate IPL pays for Normal Generation from \$0.0102/kWh to \$0.017/kWh. Second, Citizens Thermal and IPL would each be able to

¹ Although the Covanta facility discussed in the testimony in this proceeding is not specifically defined, the Commission is administratively aware that, in addition to producing steam at its Perry K plant, "Citizens also purchases steam produced at the Indianapolis Resource Recovery Facility (the "IRRF"), which is a waste-to-energy facility owned by Covanta." *In re Citizens Thermal Energy*, Cause No. 43025 (Final Order Dec. 28, 2006, page 3). Petitioner uses steam produced at the Perry K plant and steam purchased from Covanta to meet its customers' annual steam requirements. *Id.*

terminate the amended PPA upon three months' advance notice, as opposed to the 12-month advance notice requirement in the original PPA. Third, the term of the original PPA would be extended for an additional three years beyond the current expiration date – *i.e.*, through November 19, 2011.

Ms. Gruca testified that through informal discussions with members of Petitioner's staff, she learned that the proposed increase in the Normal Generation Energy Rate is due to increased maintenance costs, including the increased cost of materials. Therefore, to make it worthwhile for Citizens Thermal to keep electric generating Unit No. 4 up and running, the First Amendment includes an increase in the Normal Generation Energy Rate to allow Petitioner to recover the incremental costs of generating the electricity sold to IPL and to provide some fixed cost recovery for operating Unit No. 4.

Ms. Gruca agreed that reducing the timeframe in which Citizens Thermal or IPL can terminate the PPA from twelve months to three months provides a potential benefit to both parties. If a currently unknown condition were to arise that made the PPA no longer useful or beneficial to either or both parties, the PPA could be terminated within three months. However, three months would still give either party the opportunity to make alternative plans to acquire additional electric generation, if circumstances warranted such a change.

Ms. Gruca agreed with Mr. Purdue's assessment of potential benefits from continuing to use a PPA consistent with the one previously approved in Cause No. 43117. First, if an emergency or unusual condition arises and IPL needs additional electric generation, IPL could call Citizens Thermal to request that Unit No. 4 be operated for a limited period of time until the supply-reducing event is resolved.

Second, if steam produced by Covanta is in excess of what Citizens Thermal needs for its own steam system, then the excess steam could be utilized to generate electricity with Unit No. 4 to sell to IPL. If this PPA were not in place, the excess steam would be wasted.

Third, Citizens Thermal's ability to dispatch Unit No. 4 provides operational benefits, in that if only one of Petitioner's boilers is in service, then Petitioner can run the No. 4 Turbine to keep the other Perry K steam production plant boilers on-line.

Ms. Gruca indicated that the OUCC supports Commission approval of the First Amendment to the PPA. In addition to the benefits described above, Ms. Gruca testified that the First Amendment to the PPA makes minimal changes to the agreement it is intended to replace and does not alter the basic obligations under the former PPA. IPL is obligated to purchase energy from Citizens Thermal, and Citizens Thermal is obligated to sell all of the electricity generated by Unit No. 4 to IPL when IPL's distribution system is in service, less any output used by Citizens Thermal.

Ms. Gruca also observed that, like the original PPA, the proposed amended PPA continues to establish one price for "Normal Generation" and a higher price for "Dispatch

Generation.”

Ms. Gruca testified that the 43117 PPA also had an initial three-year term – like the proposed First Amendment to the PPA. The Commission’s initial approval of a 3-year PPA and the expected continuation of benefits flowing from the original agreement support the proposed extension of the amended PPA through the November 19, 2011 expiration date. Ms. Gruca explained that when the First Amendment is set to expire, if Petitioner proposes to further extend the term of the PPA with or without further amendment, the Commission can reassess the proposal and anticipated benefits in light of then-existing conditions.

Ms. Gruca reported that Citizens Thermal’s staff confirmed during informal discussions that it has not needed to run, nor does it plan to run, Unit No. 4 unless or until the proposed First Amendment has been approved by the Commission; and that, if the amended PPA is approved, Petitioner will continue to operate Unit No. 4 at no more than 10 MW, consistent with the Commission’s Orders in Cause Nos. 41716 and 43117, which exempt Citizens Thermal from any certificate of need requirement if it continues to operate Unit No. 4 at no more than 10 MW. Based on her review and analysis, Ms. Gruca recommended that the Commission approve the First Amendment to the PPA.

5. Discussion and Findings. As noted above, in Cause No. 43117, we found the rates, charges, terms and conditions of the PPA reasonable. We find that the First Amendment, which makes minimal changes to the PPA, also is reasonable. While Citizens does not operate the No. 4 turbine on a significant or frequent basis, under certain circumstances its ability to sell to IPL electricity generated with Unit No. 4 offers significant benefits to both parties, including, for example, preventing the waste of excess steam that can be used to generate electricity with Unit No. 4. Consequently, we find that continuation of the PPA, as amended, is in the public interest and should be approved. We further find that Unit No. 4 continues to qualify for the exception from certificate of need requirement available to municipally owned utilities installing a generating facility with a capacity of 10 MW (*i.e.*, 10,000 kilowatts) or less.

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

1. The PPA, as amended by the First Amendment, which we find to be reasonable, is hereby approved.
2. Citizens is hereby authorized and directed to implement the terms of the PPA, as amended by the First Amendment.
3. Prior to the expiration or termination of the PPA, as amended by the First Amendment, Citizens shall notify the Commission and, as required by law, seek appropriate approval of any succeeding agreement.

4. In accordance with Indiana Code 8-1-2-70, Petitioner shall pay the following charge within twenty (20) days from the effective date of this Order to the Secretary of the Commission, as well as any additional costs that were or may be incurred in connection with this Cause:

Commission Charges:	\$ 348.41
Legals	\$ 67.99
OUCG Charges:	<u>\$ 965.22</u>
Total:	\$1,381.62

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

HARDY, GOLC, LANDIS, SERVER AND ZIEGNER CONCUR:

APPROVED: APR 29 2009

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



Brenda A. Howe
Secretary to the Commission