

ORIGINAL



STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF INDIANA GAS COMPANY, INC., ) d/b/a VECTREN ENERGY DELIVERY OF ) INDIANA, INC., FOR APPROVAL OF A GAS ) SERVICE CONTRACT WITH TATE & LYLE ) INGREDIENTS AMERICAS, INC. AND ) ESTABLISHMENT OF CONFIDENTIAL ) PROCEDURES )	CAUSE NO. 43735  APPROVED: NOV 12 2009
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**BY THE COMMISSION:**  
**James D. Atterholt, Commissioner**  
**David E. Veleta, Administrative Law Judge**

On July 14, 2009, Indiana Gas Company, Inc. d/b/a Vectren Energy Delivery of Indiana, Inc. (“Vectren” or “Petitioner”) filed its Verified Petition seeking approval from the Indiana Utility Regulatory Commission (“Commission”) of a gas service contract (“Contract”) with Tate & Lyle Ingredients Americas, Inc. (“Tate & Lyle”). On July 14, 2009, Petitioner filed a public redacted version of the testimony of Mr. Thomas L. Bailey, Manager of Industrial Sales for Petitioner, with a public redacted version of the Contract attached thereto. Petitioner also sought the establishment of confidential procedures pursuant to Indiana Code § 5-14-3-1 *et seq.* to protect trade secrets consisting of pricing provisions, service levels and terms contained in the Contract and portions of Petitioner’s case in chief describing these provisions (“Confidential Provisions”). On July 21, 2009, the Presiding Officers issued a docket entry in this Cause, finding the Confidential Provisions to be confidential on a preliminary basis.

Pursuant to proper legal notice, a Public Hearing in this Cause was held at the National City Center, 101 West Washington Street, Room 224, Indianapolis, Indiana, at 9:30 a.m. on October 7, 2009. Proofs of publication of the notice of public hearing were incorporated into the record and placed in the official files of the Commission. The Petitioner and the OUCC were present and participated. No members of the general public appeared or sought to testify at the hearing.

The Commission, based upon the applicable law and the evidence herein and being duly advised in the premises, now finds:

1. **Commission Jurisdiction and Notice.** Petitioner is an operating public utility incorporated and existing under the laws of the State of Indiana. Petitioner is a “public utility” and a “gas utility” within the meaning of those terms as used in the Public Service Commission Act, as amended, and is subject to the jurisdiction of the Commission to the extent and in the manner provided by the laws of the State of Indiana. Due and proper notice of the public hearing in this Cause was given and published by the Commission as required by law. The Commission has jurisdiction over the parties and the subject matter of this Cause.

2. **Petitioner's Characteristics.** Petitioner is engaged in the business of rendering natural gas distribution service within the State of Indiana. Petitioner owns, operates, manages and controls, among other things, plant, property, equipment and facilities which are used and useful for the production, storage, transmission, distribution and furnishing of gas service throughout Indiana.

3. **Relief Requested.** Petitioner requests Commission approval of the Contract for certain gas transportation services between Vectren and Tate & Lyle. Petitioner also requests the Commission find, pursuant to Indiana Code § 5-14-3, that certain provisions of the Contract and direct testimony describing these provisions contain "trade secrets" and are excepted from access to public records provisions under the statute.

4. **Petitioner's Direct Evidence.** In support of its request, Petitioner submitted the direct testimony of Mr. Thomas L. Bailey, Manager of Industrial Sales for Petitioner. Mr. Bailey testified the Contract resulted from the good faith, arms-length negotiations conducted between Vectren and Tate & Lyle. Tate & Lyle has been a Rate 270 natural gas customer since January, 1997 and its facility is located in Lafayette, Indiana. The current Rate 270 contract had come to the end of its evergreen term and both parties agreed to negotiate a new Contract.

Mr. Bailey testified that Tate & Lyle is one of Vectren's largest natural gas customers, remaining consistent even in the current recession. Considering this and the longstanding relationship between Vectren and Tate & Lyle, each party has agreed to a new Contract for natural gas service. Mr. Bailey explained the benefits of the Contract are threefold: (1) it allows Tate & Lyle to position itself for long term viability in Indiana while maintaining competitive energy costs that may promote future economic development investments and increased production schedules at the Lafayette facility; (2) it supports the efforts of Tate & Lyle to maintain a local and skilled workforce in Lafayette; (3) it assists Vectren's ability to retain a large viable industrial customer for a secured period of time. In this context, as the Rate 270 is designed to attract and preserve load and to assure Tate & Lyle's long-term presence as a distribution customer, Vectren has entered into the Contract. Mr. Bailey stated that contingent upon Commission approval of the Contract, Vectren will provide local gas transportation service to Tate & Lyle at the Premises under the agreed-upon terms.

Mr. Bailey explained that Rate 270 is designed to enable Petitioner to preserve and/or attract load on its system. Contracts negotiated under Rate 270 must be approved by the Commission and meet the following criteria:

- a. The customer must have entered into a written contract with Vectren which specifies the terms and conditions of the service to be provided.
- b. The written contract between Vectren and the customer must be filed with the Commission for its approval.
- c. The rates and charges for gas service provided under Rate Schedule No. 270 must be specified in the written contract.
- d. The customer must agree to a term for the written contract of at least five years.

- e. The customer must agree that during the term of the written contract it will not bypass Vectren's system via a direct or indirect interconnection with another supplier of gas service or displace or substantially reduce Vectren's provision of energy service through the use of an energy service other than natural gas.
- f. The service to be provided under Rate Schedule No. 270 must be necessary to enable Vectren to preserve or attract the load at one or more of the premises to be served pursuant to the written contract between Vectren and the customer.
- g. The written contract between Vectren and the customer must be the result of "arms length" negotiations.
- h. The written contract between Vectren and the customer must result in a direct benefit to Vectren's other customers.

Mr. Bailey explained that the Contract fulfills the criteria under Rate 270. Tate & Lyle entered into a written contract with Vectren specifying the terms and conditions of the service to be provided. The Contract was filed with the Commission. The Contract sets forth the rates and charges for the gas service to be provided thereunder to Tate & Lyle. The Contract has a term of at least five (5) years during which Tate & Lyle has agreed not to directly or indirectly bypass Vectren's system or otherwise substantially reduce Vectren's provision of energy service through the use of an energy service other than natural gas. The Contract assists Tate & Lyle's economic viability and Vectren's preservation of load. The Contract was the result of "arms length" negotiations and provides direct benefits to Vectren and its customers.

Mr. Bailey testified that the rates established in the Contract are sufficient to cover the cost of the meter and service line to be used in providing service to Tate & Lyle, and will provide a contribution to the recovery of Vectren's fixed costs. He explained that the Contract would produce many public benefits. He stated that Vectren's existing and future gas customers will benefit from the contribution which will be made by Tate & Lyle to the fixed costs currently being paid by such customers. Tate & Lyle will benefit from the rate stability and competitive rates provided by the Contract.

Mr. Bailey further testified that the Contract will not alter any of Vectren's other existing rates or contracts, and therefore will not adversely impact the adequacy or reliability of service provided to other Vectren customers. He concluded that the rates contained in the Contract are reasonable and just, practical and advantageous to Tate & Lyle and Vectren, in the public interest, and not inconsistent with the purposes of the Public Service Commission Act, as amended.

In the confidential version of his testimony which was admitted under seal, Mr. Bailey explained the pricing, service levels, and rates and charges negotiated between Vectren and Tate & Lyle, contained in the Confidential Provisions. He further explained that because Vectren is in the process of negotiating other economic development and business retention contracts, if the above provisions in the Contract became generally known or readily ascertainable to the other

parties with whom Vectren is negotiating or to potential independent power suppliers and marketers with whom Vectren would compete, this knowledge would provide considerable economic value to such parties. Mr. Bailey testified that, in effect, knowledge of these pricing provisions by other customers would establish certain benchmarks and a price ceiling in future negotiations, thereby limiting the potential revenues and benefits that could accrue to customers, shareholders, and Vectren. Mr. Bailey further stated that knowledge of the pricing provisions by potential energy supply competitors could enable them to gain an unfair advantage in future competitive situations. He testified that disclosure of Tate & Lyle's operational data of the Contract could be of value to Tate & Lyle's competitors in terms of its current and future product output.

Mr. Bailey testified that the information contained in the Confidential Provisions has been the subject of reasonable efforts to maintain its secrecy. He stated that within Vectren, this information is disclosed only to those persons directly involved with negotiating, obtaining approval of, and monitoring compliance with the Contract; outside of Vectren, this information is disclosed only to individuals who have signed a confidentiality agreement.

Mr. Bradley E. Lorton testified on behalf of the OUCC. Mr. Lorton testified that he reviewed the unredacted version of Mr. Bailey's testimony and the unredacted Contract. Mr. Lorton also reviewed the Verified Statement of James A. Hoyt on behalf of Tate & Lyle, and he reviewed Petitioner's responses to the OUCC's data requests. Mr. Lorton testified that he is in agreement with the relief requested by Petitioner and recommended that the Contract be approved.

5. **Discussion.** Vectren seeks approval of the Contract under the provisions of Indiana Code § 8-1-2-24 ("Section 24"), and § 8-1-2-25 ("Section 25") and its Rate Schedule No. 270. Section 24 of the Act provides:

Nothing in this chapter shall be taken to prohibit a public utility from entering into any reasonable arrangement with its customers or consumers, or with its employees, or with any municipality in which any of its property is located, for the division or distribution of its surplus profits, or providing for a sliding scale of charges or other financial device that may be practicable and advantageous to the parties interested. No such arrangement or device shall be lawful until it shall be found by the commission, after investigation, to be reasonable and just and not inconsistent with the purpose of this chapter. Such arrangement shall be under the supervision and regulation of the commission.

Section 25 provides as follows:

The commission shall ascertain, determine and order such rates, charges and regulations as may be necessary to give effect to such arrangement, but the right and power to make such other and further changes in rates, charges and regulations as the commission may ascertain and determine to be necessary and reasonable, and the right to revoke its approval and amend or rescind all orders

relative thereto, is reserved and vested in the commission, notwithstanding any such arrangement and mutual agreement.

Therefore, discounted rate contracts are lawful if the Commission finds their provisions to be reasonable and just, practicable and advantageous to the parties, and not inconsistent with the purposes of the Act.

We find that the Contract and the evidence submitted in support of the Contract satisfy all of the legal requirements imposed by Sections 24 and 25. The Contract will result in enabling Vectren to obtain revenues from the provision of gas service to Tate & Lyle. An inspection of the Confidential Provisions demonstrates that the rates provide for the recovery of incremental costs plus a contribution to the recovery of Petitioner's fixed costs and therefore are reasonable and just.

We further find the Contract fulfills the requirements of Petitioner's Rate Schedule No. 270. Petitioner filed its written contract with Tate & Lyle specifying the rates and charges for the gas service to be provided thereunder. During the contract term, Tate & Lyle has agreed not to bypass Vectren's system or otherwise substantially reduce Vectren's provision of energy service through the use of an energy service other than natural gas. The record demonstrates that the Contract was necessary to enable Vectren to preserve Tate & Lyle's load.

With respect to the term of the Contract, Vectren and Tate & Lyle have agreed to an initial five-year term that automatically extends if neither party provides written notice to the other party prior to the expiration of the Contract. Contracts that continue in perpetuity with no periodic Commission oversight may result in terms that are no longer in the public interest even if the parties to the contract do not object to ongoing terms. Consequently, we find that the total term of the Contract shall not extend beyond five years. In the event that the Vectren and Tate & Lyle choose to extend the Contract, the parties shall file notice with the Commission, under this Cause, six months prior to the expiration of the contract. If either of the parties determines to provide written notice to the other of an intent not to extend the Contract and the parties wish to continue operating under terms of a special contract, Vectren and Tate & Lyle shall file a petition with the Commission for approval of a new gas supply agreement at least six months prior to the expiration of the Contract.

The evidence indicates that there will be benefits under the Contract, sufficient to merit and support approval of the Contract. The Commission finds that the Contract, with the modification to the term as set forth above, is reasonable and just, practical and advantageous to Tate & Lyle, Vectren, and Vectren's existing and future customers and is not inconsistent with the purposes of the Act, and therefore should be approved.

6. **Confidential Information.** Pursuant to the July 21, 2009 docket entry in this Cause, the Confidential Information prefiled with this Commission was found to be confidential on a preliminary basis. This Commission's further *in camera* inspection reveals that the Confidential Provisions therein constitute trade secrets as defined in Indiana Code § 24-2-3-2, and therefore should be exempted from the public access requirements contained in Indiana Code §§ 5-14-3 and 8-1-2-29 and held confidential and remain under seal in accordance with Commission practices. The Commission, therefore, finds that the Confidential Provisions

contain confidential trade secrets that have economic value to Petitioner from being neither known to nor ascertainable by its competitors and other persons who could obtain economic value from the knowledge and use of such information; that the public disclosure of such information would have substantial detrimental effect on Petitioner and that the information is subject to efforts of Petitioner that are reasonable under the circumstances to maintain its secrecy.

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

1. The provisions of the Gas Service Contract by and between Petitioner and Tate & Lyle, with the exception of the term as set forth above, are reasonable and just, are practical and advantageous to the parties thereto, and are not inconsistent with the provisions of Indiana Code § 8-1-2.

2. The Gas Service Contract by and between Petitioner and Tate & Lyle submitted in this Cause shall be and hereby is approved as modified herein.

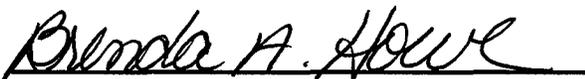
3. The Confidential Provisions described herein are determined to be confidential trade secret information as defined in Indiana Code § 24-2-3-2 and shall continue to be exempt from public access and disclosure pursuant to Indiana Code § 5-14-3-1 and § 8-1-2-29.

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

**HARDY, ATTERHOLT, GOLC, LANDIS, AND ZIEGNER CONCUR:**

**APPROVED: NOV 12 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**