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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

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 (1) AUTHORITY TO)
INCREASE ITS RATES AND CHARGES)
FOR STEAM UTILITY SERVICE, (2))
APPROVAL OF A NEW SCHEDULE OF)
RATES AND CHARGES APPLICABLE)
THERETO, AND (3) APPROVAL OF)
CHANGES TO ITS GENERAL TERMS AND)
CONDITIONS FOR STEAM SERVICE)

CAUSE NO. 43821

FINAL ORDER

APPROVED: MAY 11 2010

BY THE COMMISSION:

James D. Atterholt, Commissioner
Scott R. Storms, Chief Administrative Law Judge

On November 2, 2009, the Board of Directors for Utilities of the Department of Public Utilities of the City of Indianapolis, as a successor trustee of a public charitable trust, d/b/a Citizens Thermal (“Petitioner” or “Citizens”) filed its Verified Petition (“Petition”) with the Indiana Utility Regulatory Commission (“Commission”) seeking: (i) authority to increase its rates and charges for steam utility service; (ii) approval of a new schedule of rates and charges applicable thereto; and (iii) approval of certain changes to its general terms and conditions for steam service. Also on November 2, 2009, Petitioner filed its case-in-chief consisting of the direct testimony and exhibits of Carey B. Lykins, William A. Tracy, Lindsay C. Lindgren, John R. Brehm, Sabine E. Karner, LaTona S. Prentice, and Craig A. Jones.

On November 24, 2009, an ad hoc group of Petitioner’s industrial customers consisting of Eli Lilly & Company and National Starch & Chemical Company, and known as the Citizens Industrial Group (“CIG”) filed a Petition to Intervene. The Presiding Officers granted CIG’s Petition to Intervene by docket entry dated December 4, 2009.

In accordance with 170 IAC 1-1.1-15 and pursuant to proper notice given as provided by law, a Prehearing Conference was held in Room 224 of the National City Center, 101 West Washington Street, Indianapolis, Indiana at 2:00 p.m. on Tuesday, December 8, 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, the Indiana Office of Utility Consumer Counselor (“OUCC”) and CIG (collectively, the “Parties”) appeared and participated in the Prehearing Conference. On December 22, 2009, the Commission issued a Prehearing Conference Order, which set forth certain determinations with respect to the conduct of this Cause based upon the stipulations of the Parties at the Prehearing Conference.

On February 10, 2010, the OUCC filed the direct testimony and exhibits of its witness Michael D. Eckert. On the same day, CIG filed the direct testimony and exhibits of its witness Michael Gorman. Petitioner filed the rebuttal testimony and exhibits of John R. Brehm, Lindsay C. Lindgren, Sabine E. Karner, Robert J. Hummel and LaTona S. Prentice on March 1, 2010.

On March 12, 2010, Citizens filed a *Motion for Continuance of Evidentiary Hearing* (“Motion”). In its Motion the Petitioner requested that the Commission continue the March 15-17, 2010 Evidentiary Hearing because the Parties had reached an agreement in principle resolving all issues in the proceeding. The Petitioner further indicated in the Motion that the Parties intended to file a written settlement agreement reflecting their agreement, along with supporting testimony and exhibits, on March 19, 2010. The Presiding Officers granted the Motion by docket entry dated March 15, 2010 and continued the Evidentiary Hearing to March 31, 2010.

On March 19, 2010, the Parties filed the “Stipulation and Settlement Agreement among Citizens Thermal Energy, the Indiana Office of Utility Consumer Counselor and the Citizens Industrial Group” (the “Settlement Agreement”). Also, on March 19, 2010, Citizens filed the supporting testimony and exhibit of John R. Brehm, the OUCC filed the supporting testimony of Michael D. Eckert and CIG filed the supporting testimony of Michael Gorman.

Pursuant to proper notice given as provided by law, an Evidentiary Hearing was commenced on March 31, 2010, at 9:30 a.m., EDT, in Room No. 224, National City Center, Indianapolis, Indiana 46204. Petitioner, the OUCC and CIG participated in the hearing. No members of the general public appeared. During the Evidentiary Hearing the direct testimony and exhibits of the Parties were offered and admitted into evidence without objection. Citizens’ rebuttal testimony and exhibits were also offered and admitted into evidence without objection. The Parties offered into evidence Joint Settlement Exhibit 1, consisting of the Settlement Agreement, and supporting attachments. The Parties’ respective supplemental testimony and exhibits in support of the Commission’s approval of the Settlement Agreement also were offered and admitted into evidence.

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

1. Legal Notice and Commission Jurisdiction. Due, legal and timely notice of the filing of the Petition in this Cause was published by Petitioner, as required by law. Due, legal and timely notice of the public hearings conducted in this Cause was caused to be published by the Commission.

Petitioner is a municipally owned 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. Pursuant to Ind. Code § 8-1-11.1-3(c)(9) and Ind. Code § 8-1.5-3-8, Petitioner is required to obtain Commission approval of changes in its schedule of rates and charges and terms and

conditions for steam service. The Commission has jurisdiction over the Petitioner and the subject matter of this proceeding.

2. **Petitioner's Organization and Business.** Petitioner is 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. Its principal office is located at 2020 North Meridian Street, Indianapolis, Indiana 46202. Through its Steam Division, Petitioner owns, operates, manages and controls plant and equipment used for the production, distribution and furnishing of steam utility service to the public. On average during the twelve months ending June 30, 2009, Petitioner provided steam service to 198 customers in the City of Indianapolis, Indiana through its steam production and distribution facilities.

3. **Relief Requested.** On November 1, 2007, Petitioner placed into effect rates and charges and terms and conditions for steam service approved by the Commission in its October 30, 2007 Order in Cause No. 43201. In the foregoing Order, the Commission authorized Petitioner to increase its rates and charges in two phases. Order at 18. Petitioner placed the Phase II rates and charges into effect on December 1, 2008. *Id.* The Order in Cause No. 43201 further authorized Petitioner to file quarterly fuel cost adjustments applications. *Id.*

The Petition filed in this Cause indicated that Petitioner's operation and maintenance expenses, investments in plant, debt service, and extensions and replacements have increased since September 30, 2006, the close of the test year in Cause No. 43201. Verified Pet'n at ¶ 9. Accordingly, the Petitioner indicated that its rates and charges for steam utility service, as approved by the Commission in Cause No. 43201, and as thereafter modified by quarterly fuel cost adjustments, result in the collection of revenues which do not meet the requirements of reasonable and just rates and charges for services. *Id.* Petitioner, therefore, sought approval to cancel its existing schedule of rates and charges for steam utility service and to file with the Commission, in lieu thereof, a new schedule of rates and charges. *Id.* at ¶ 10. Petitioner proposed that its new rates and charges be based upon its steam utility operations at June 30, 2009 and the results of its operations on an as-adjusted basis for the 12-month period after that date. *Id.* at ¶ 12.

In its case-in-chief, Petitioner sought approval to increase its rates and charges to generate additional annual operating revenues of \$8,215,506. Pet. Ex. LSP-1. Petitioner also presented revised schedules of rates and charges as Petitioner's Exhibit Nos. CAJ-3 and CAJ-4 and proposed certain changes to its Terms and Conditions for Steam Service, which were set forth in Petitioner's Exhibit Nos. CAJ-5 and CAJ-6.

In its testimony presented in this matter the CIG suggested adjustments to Petitioner's proposed revenue increase for air emission allowance sales revenue, debt service cost, interest income, operations and maintenance costs, and extensions and replacements and, as a result, proposed in its case-in-chief that the Commission approve a revenue increase for Petitioner in the amount of \$4.3 million. CIG Ex. MPG at 4-10. The OUCC suggested certain adjustments to Citizens' proposed pro forma revenue requirements relating to insurance expenses, rate case expenses, payroll expenses, interest

income, and extensions and replacements and recommended as a result that Petitioner's rates be increased by no more than \$5.66 million. Pub. Ex. No. 1. at 3, 8-14.

In its rebuttal testimony, Citizens accepted certain proposed adjustments to its revenue requirements and proposed that its rates and charges be increased to generate additional annual operating revenues of \$7,819,578. Pet. Ex. LSP-R, at 23; Pet. Ex. LSP-R7.

4. **Applicable Law.** Indiana Code § 8-1.5-3-8 establishes the revenue requirement elements which this Commission must apply in determining reasonable and just rates and charges for a municipally owned utility. Certain of the elements are cash revenue requirements, which Petitioner would need to pay as legal and other necessary expenses incident to the operation of its steam utility. These elements are:

- (a) maintenance costs, operating charges, including the cost of purchased power, upkeep and repairs;
- (b) taxes, including payments in lieu of taxes;
- (c) interest charges on bonds or other obligations, including leases;
- (d) a sinking fund for the liquidation of bonds or other obligations, including leases;
- (e) revenue needed to "provide adequate money for working capital;" and
- (f) adequate money for making extensions and replacements to the extent not provided for through depreciation expense.

It is the intention of Ind. Code § 8-1.5-3-8 that rates and charges produce an income sufficient to maintain a municipally-owned utility's property in a sound physical and financial condition to render adequate and efficient service. Rates and charges that are too low to meet the foregoing requirements are unlawful.

5. **Testimony Presented by the Parties.**

A. **Petitioner's Case-in-Chief Testimony.** Citizens' President and Chief Executive Officer, Carey B. Lykins described the Board of Directors for Utilities, the public charitable trust it is entrusted with managing the municipal steam utility that is the Petitioner in this proceeding. *See*, Pet. Ex. CBL at 3-8. Mr. Lykins testified that Citizens' "current rates and charges simply are not producing income sufficient for it to maintain its utility property in a sound physical and financial condition to render adequate and efficient service." *Id.* at 9. Mr. Lykins also described the significant challenges Petitioner faces in the coming years, including the replacement of an aging production and distribution plant, which continues to drive the annual cost of making extensions and replacements higher. *Id.*

William A. Tracy, Citizens' Senior Vice President of Operations, described the operations of Petitioner's steam system, including Citizens' initiatives to control the costs of producing and distributing steam to its customers and at the same time improve customer service, safety, reliability, and efficiency. *See*, Pet. Ex. WAT. Mr. Tracy indicated that the steam system faces major challenges, including the need to upgrade and maintain the aging production plant and steam distribution system, fuel supply planning and complying with increasingly stringent environmental regulations. *Id.* at 9-11. Mr. Tracy stated Petitioner's proposed increase to Citizens' revenue requirement was necessary to produce income sufficient to ensure that Petitioner can maintain its physical plant and financial strength. *Id.* at 11.

Citizens' Vice President of Gas & Steam Operations, Lindsay C. Lindgren, discussed Petitioner's annual extensions and replacements program, including efforts to maintain a safe, dependable and efficient system through extensions and replacements as well as cost cutting efforts and process improvements to hold down annual operating costs. *See*, Pet. Ex. LCL. Mr. Lindgren also discussed the challenges the steam utility is facing from an environmental compliance perspective, including the likelihood of additional and more stringent environmental regulations. *Id.* at 11-13. Mr. Lindgren testified that the annual revenue requirement for extensions and replacements to be included in rates and charges for services should be \$6,183,474. *Id.* at 15. Petitioner based its proposed revenue requirement for extensions and replacements on "the average annual amount that was invested for extensions and replacements during the twenty-four months ended June 30, 2009 of \$7,971,992, plus expenditures for CSS extensions and replacements, including computer equipment and hardware of \$484,103, less expenditures for the MACT compliance program of \$2,272,621." *Id.* at 15-16.

John R. Brehm, Citizens' Senior Vice President and Chief Financial Officer, described Petitioner's pro forma revenue requirement for debt service, as well as the amount of its pro forma interest income. *See*, Pet. Ex. JRB Revised. Mr. Brehm indicated he apportioned the debt service on the Thermal Energy System Revenue Bonds, Series 2001A between the steam utility (43.41%) and chilled water operation (56.59%) in the same manner as was done in Petitioner's last general rate case, *i.e.*, Cause No. 43201. *Id.* at 6-7. Mr. Brehm also described the Thermal Energy System Revenue Refunding Bonds, Series 2010A which are being issued to refund a bank line of credit which is maturing. *Id.* at 10. Mr. Brehm stated Petitioner has been operating at a cash deficit; consequently, it has been necessary to deplete its working capital and draw on its bank line of credit to meet current expenditures. *Id.* Mr. Brehm stated that the Petitioner cannot repay the line of credit and maintain adequate access to the short-term credit markets unless it issues bonds even assuming it is granted the relief requested in this proceeding. *Id.* at 11.

Citizens' Executive Manager, Financial Planning and Analysis, Sabine E. Karner, explained the test year income statement and balance sheet for Petitioner, as well as the test year allocation of Corporate Support Services costs. *See*, Pet. Ex. SEK; Pet. Ex. SEK-1. Ms. Karner testified that Citizens Energy Group has organized its executive management and administrative functions as well as certain billing and customer service functions within a centralized Corporate Support Services or "CSS" organizational

framework. *Id.* at 11. By centralizing the cost of these functions in CSS, Citizens Energy Group is able to combine and share its executive management and administrative capabilities across the various business units that are served by and benefit from the activities of the CSS personnel. *Id.* Ms. Karner stated the allocation of CSS costs is accomplished through a detailed cost model with numerous cost drivers. *Id.* at 12. The objective of the cost allocation methodology is to assign the costs of CSS services as accurately as possible to the consumers or beneficiaries of each service. *Id.* at 13.

Citizens' Executive Director of Regulatory Affairs, LaTona S. Prentice, described and sponsored the overall proposed revenue requirements for Petitioner's provision of steam service, including the underlying adjustments to the financial results for the test year ended June 30, 2009. *See*, Pet. Ex. LSP. Ms. Prentice described the actual operating loss for the twelve months ended June 30, 2009 and testified that the pro forma revenue requirement indicates that Petitioner requires an increase in base rate revenues of \$8,215,506. *Id.* at 3-4. She also sponsored Petitioner's Exhibit LSP-1, which includes schedules showing Citizens' proposed pro forma revenue requirements and computations of pro forma adjustments.

Ms. Prentice also adopted and sponsored the Direct Testimony and Exhibits of Mr. Craig A. Jones, which described the proposed changes to Petitioner's rate tariffs and terms and conditions for steam service. Exhibits CAJ and CAJ-1 through CAJ-6. Ms. Prentice also sponsored exhibits reflecting the proposed modifications to the rate schedules and revisions to the terms and conditions of service. Pet. Exs. CAJ-3 and CAJ-5.

B. CIG's Case-in-Chief Testimony. Michael Gorman, managing principal of Brubaker & Associates, Inc., recommended the Commission approve a revenue increase for the Petitioner in the amount of \$4.3 million. Mr. Gorman suggested adjustments to Petitioner's proposed revenue requirements for: air emission allowance sales revenue, debt service cost, interest income, operations and maintenance costs, and extensions and replacements. CIG Ex. MPG at 4-10.

Mr. Gorman recommended a \$480,550 adjustment to Citizens' revenue requirements to reflect an increase in air emission allowance sales revenues, based on a five-year average of Petitioner's net revenues from the sale of air emission allowances. *Id.* at 5. Mr. Gorman further recommended that 40% of the Thermal Energy System debt service requirements be allocated to the steam division and the remainder to the chilled water division, rather than the 43.41% allocation to the steam division proposed by Petitioner. *Id.* at 6-8. Mr. Gorman based his recommendation on the current and historical cash flow of the steam utility relative to the cash flow of the chilled water operations. *Id.* at 6-7. Mr. Gorman also proposed an adjustment of \$188,020 to interest income based on the pro forma short-term interest rate. *Id.* at 10-11.

Mr. Gorman suggested several adjustments which totaled a \$1.6 million reduction to Petitioner's proposed revenue requirement for operations and maintenance expense. *Id.* at 11. Among other adjustments, Mr. Gorman recommended removing short-term incentive pay, executive incentive pay and supplemental pay from Citizens' revenue requirements. *Id.* at 14. Mr. Gorman stated that any "incentive compensation to these

executives and employees to increase the profitability of operations should be funded through general trust service operations and not out of regulated cost of service.” *Id.* at 16. Mr. Gorman also disagreed with Petitioner’s proposed methodology for the allocation of CSS costs.

Mr. Gorman further recommended using a four-year average of extensions and replacements to develop a normalized budget for setting rates. *Id.* at 16. Mr. Gorman testified that Citizens’ proposed two-year average results in a revenue requirement that is “overstated.” *Id.* at 15. Mr. Gorman stated that use of a four-year average lowers Petitioner’s revenue requirement for extensions and replacements by \$1.22 million. *Id.* at 16.

Mr. Gorman also commented on Citizens’ fuel adjustment clause (“FAC”) frequency. Mr. Gorman proposed that Citizens return to using an annual FAC instead of a quarterly FAC. *Id.* at 17. He opined that a return to the annual FAC frequency would reduce variability and volatility in the FAC factor and would make it easier for customers to plan for changes in the FAC factor. *Id.* Mr. Gorman also stated that he believes the quarterly FAC has inflated the earnings test bank for Citizens, reducing its effectiveness as a safeguard. *Id.*

C. OUCC’s Case-in-Chief Testimony. OUCC’s Senior Utility Analyst in the Electric Division, Michael D. Eckert, recommended that Citizens’ rates be increased by \$5.66 million, which is \$2.55 million less than Petitioner’s proposal. Pub. Ex. No. 1. at 3. Mr. Eckert stated that the OUCC did not consider its recommendation to be a “revenue requirement floor,” as the Commission may find additional adjustments are appropriate based on the recommendations of other parties. *Id.* at 4.

Mr. Eckert suggested certain adjustments to Petitioner’s proposed pro forma revenue requirements relating to insurance expenses, rate case expenses, payroll expenses, interest income, and extensions and replacements. *Id.* at 8-14. Mr. Eckert stated that Petitioner’s proposed revenue requirement for payroll expense included ten CSS positions that were vacant as of February 1, 2010 and six steam utility positions that were vacant as of February 1, 2010. *Id.* at 10-11.

Mr. Eckert further recommended an annual extensions and replacements revenue requirement of \$4,299,631, as compared to Petitioner’s proposal of \$6,183,474. *Id.* at 13. Mr. Eckert utilized a three-year historical average for the calculation of Petitioner’s extensions and replacements revenue requirement. *Id.* Mr. Eckert also excluded from the three-year historical average, two expenditures that he deemed to be non-recurring in nature. *Id.* at 14. Mr. Eckert also recommended Petitioner continue to produce the long-term planning report it agreed to provide in Cause No. 43201. *Id.*

D. Petitioner’s Rebuttal Testimony. Petitioner’s witness Brehm responded to CIG’s proposed adjustments to Citizens’ debt service revenue requirement. Mr. Brehm testified the amount of debt service assigned to the steam and chilled water divisions should be based on specific identification of the proceeds from each debt issuance. *Id.* at 16. Mr. Brehm stated CIG’s “proposed debt service allocation approach consistently fails to acknowledge the fundamental reality that when the Thermal Energy

debt was issued the Steam System share of cash proceeds from such issuance was actually deposited in a Steam System bank account for use by the Steam System in rendering service to its customers.” *Id.* at 22. Mr. Brehm stated the allocation percentage included in Citizens’ case-in-chief is the mathematical result of how the proceeds from the debt issuance were actually deployed. *Id.* Mr. Brehm stated that if the Commission were to change the portion of the debt service assigned to the steam division, Petitioner would need to write a check to the chilled water division for \$4.8 million. *Id.*

Mr. Brehm also testified that both CIG and the OUCC failed to recognize that the 2010A revenue refunding bonds are being issued to pay off a maturing \$10 million bank line of credit and will not increase Petitioner’s cash on hand. *Id.* at 24. As a result, Mr. Brehm testified that the CIG and OUCC’s adjustments to interest income should be rejected. *Id.* at 25. Mr. Brehm also stated that CIG incorrectly computed interest income on short-term cash investments with an interest rate unattainable in today’s market. *Id.* at 28-29.

Petitioner’s witness Lindgren addressed the recommended reductions in Petitioner’s proposed revenue requirement for extensions and replacements. Pet. Ex. LCL-R, at 2. Mr. Lindgren testified that the OUCC’s extensions and replacements proposal, which is less than 65% of the amount of Petitioner’s extensions and replacements expenditures during the test year, would be insufficient to support Petitioner’s ongoing needs for capital expenditures to provide safe, adequate, and reliable steam service. *Id.* at 3. Mr. Lindgren indicated CIG’s extensions and replacements proposal, based on a 4-year budget rather than a 2-year average, also would result in an insufficient revenue requirement. *Id.* at 5. According to Mr. Lindgren, the annual revenue requirement for extensions and replacements should be no less than \$6,183,474. *Id.* at 6.

Petitioner’s witness Karner responded to CIG witness Gorman’s testimony regarding the allocation of CSS costs. Pet. Ex. SEK-R, at 1-2. Contrary to Mr. Gorman’s assertion, Ms. Karner testified the allocation cost drivers generally were based on the most current data at the time of collection. *Id.* at 2. Ms. Karner also indicated CIG’s recommended methodology for allocating CSS costs departs from that previously approved by the Commission. *Id.* at 4. Ms. Karner urged the Commission to reject the CIG’s adjustment to Petitioner’s CSS allocations and said Petitioner’s figures were based on a rational approach to assigning costs using the most relevant allocators. *Id.* at 6.

Petitioner’s witness Robert J. Hummel is the Vice President of Human Resources for Citizens Energy Group. Mr. Hummel responded to CIG’s recommendation that short-term and executive incentive pay, as well as supplemental pay, be excluded from the Petitioner’s revenue requirements. Pet. Ex. RJH-R, at 2. Mr. Hummel noted that the OUCC did not propose to eliminate incentive or supplemental pay from Petitioner’s revenue requirements. *Id.* at 3. Mr. Hummel further noted that the Commission previously approved a rate increase for Citizens Gas, which included incentive pay and specifically rejected an argument that such costs should be excluded from the gas utility’s revenue requirements. *Id.* at 3-4. Mr. Hummel also testified that incentive and supplemental pay do not result in employees earning compensation above levels reasonably necessary to attract and maintain a qualified workforce. *Id.* at 5-14. Mr.

Hummel also demonstrated that neither incentive pay nor supplemental pay is designed to increase profitability. *Id.*

Petitioner's witness Prentice responded to certain proposed adjustments to Petitioner's revenue requirements made by the OUCC and CIG. *See*, Pet. Ex. LSP-R. Ms. Prentice generally accepted the OUCC's insurance expense adjustment, as well as its rate case expense adjustment. *Id.* at 2, and 4-6. Ms. Prentice also accepted the OUCC's recommendation to remove from Petitioner's revenue requirements payroll costs associated with certain positions that Petitioner does not expect to fill. *Id.* at 9. However, Ms. Prentice noted that some of the previously unfilled positions have now been filled. *Id.* Ms. Prentice disagreed with the CIG's proposed adjustment to air emissions allowance sales revenues. *Id.* at 20-22. Ms. Prentice noted that Petitioner's revenues from air emissions allowance sales have steadily declined over the past five years. *Id.* at 20. Ms. Prentice stated that Petitioner's rebuttal adjustments reduced its requested revenue requirement increase to \$7,819,578. *Id.* at 23.

Ms. Prentice also responded to the CIG's recommendation that Petitioner return to an annual FAC. Ms. Prentice stated the quarterly FAC has reduced Citizens' FAC variance account balance. *Id.* at 14. Ms. Prentice testified that "[w]ith a quarterly FAC, the [Petitioner] is better able to forecast fuel prices, incorporate current operating conditions, and as a result produce a more accurate forecast of fuel costs." *Id.* Ms. Prentice also disagreed with the CIG's assessment that the annual FAC method has inflated the earnings test bank and testified that the CIG did not provide any evidence that Petitioner has inaccurately calculated the earnings test bank. *Id.* at 15-23.

6. The Settlement Agreement. The Parties filed a Settlement Agreement on March 19, 2010 which resolves each of the issues raised in the Parties' respective pre-filed testimony and exhibits. The following summarizes the terms of the Settlement Agreement:

A. Base Rate Relief. The Parties agree that Citizens' current rates and charges for service should be increased upon the Commission's adoption of a final Order approving the terms and conditions of the Settlement Agreement so as to produce additional operating revenues from retail sales of \$6,226,690, and total pro forma operating revenues of \$73,441,055, representing a 9.26% increase in operating revenues. The Settlement Agreement provides that Citizens' annual net revenue requirement is as detailed below:

Cost of Fuel	\$34,654,434
Other Operation and Maintenance Expense	\$26,496,451
Taxes Other Than Income Taxes	\$970,184
Extensions and Replacements	\$4,961,394
Debt Service	<u>\$6,355,907</u>
Total Revenue Requirement	\$73,438,370
Less: Non-Operating Revenues	(\$84,489)
Plus: Utility Receipts Tax (1.4% of increase)	<u>\$87,174</u>
Net Revenue Requirement	\$73,441,055

The Parties further agree the increase in Petitioner’s revenue requirement should be applied on an equal percentage basis across-the-board to all rate classes in accordance with the schedules of rates and charges attached to the Settlement Agreement as Joint Settlement Attachment 2.

B. Quarterly FAC Applications. The Parties agree that Citizens will continue to file its FAC applications on a quarterly basis and will continue to perform the earnings bank calculation in accordance with the procedures agreed upon in the Joint Stipulation and Settlement Agreement approved by the Commission in Cause No. 43201.

C. Terms and Conditions for Service. The Parties agree that the miscellaneous revisions to Citizens’ General Terms and Conditions for Steam Service described in the testimony of Craig A. Jones, as adopted by LaTona S. Prentice, are “nondiscriminatory, reasonable, and just,” and should be approved by the Commission.

D. Long Term Planning. Citizens agrees to continue to biennially produce a “work plan” to highlight and describe its production planning process for the steam system as provided in the Joint Stipulation and Settlement Agreement approved by the Commission in Cause No. 43201. Citizens will include in each biennial work plan a disclosure of any new financing incurred during the reporting period and a description of the assignment of any debt service associated with such financing. Citizens also will continue to prepare an “Environmental Challenges/Compliance Report” (either separately or as a section of the work plan) and provide the report to the OUCC, CIG and Commission annually.

E. Extension of Agreement with National Starch. The “Agreement for Use of Industrial Steam Service between Citizens Thermal Energy and National Starch and Chemical Corporation” (the “Agreement”) originally was approved by the Commission on April 3, 2002 and a First Amendment was approved on April 16, 2008. The First Amendment extended the initial term of the Agreement to February 15, 2011. The Parties agree that the Agreement will be further amended to extend by two years the date by which it would expire to February 15, 2013, and that the amendment will be filed

with the Commission within 90 days after the final Order is issued in this Cause. All other terms of the Agreement will remain unchanged.

F. Cost-of-Service Study. Citizens agrees to prepare and present to the Commission a cost-of-service study as part of its next general rate case.

G. Other Provisions. The Settlement Agreement reflects that its terms are based on the Parties' independent review of the evidence and represent a fair, reasonable and just resolution of all the issues in this Cause, subject to their incorporation into a final Order without modification or further condition, which may be unacceptable to any Party. The Settlement Agreement further provides that it shall have a non-precedential effect and does not constitute an admission by any Party in any other proceeding except as necessary to enforce its terms. The Settlement Agreement is without prejudice to and will not constitute a waiver of any position that a Party may take in future proceedings.

7. Testimony in Support of the Settlement Agreement.

A. Citizens' Testimony in Support of the Settlement Agreement. Petitioner's witness Brehm testified that the Settlement Agreement was the product of negotiations that occurred primarily after the Parties filed their respective prepared testimony and exhibits. Petitioner's Settlement Exhibit 1 at 1. Mr. Brehm stated the Settlement Agreement provides that Citizens' pro forma operating revenues would be increased by \$6,226,690 in arriving at the pro forma total operating revenues at proposed rates of \$73,441,055, representing a 9.26% increase in operating revenues from sales to retail customers. *Id.* at 2. Under the terms of the Settlement Agreement, the new rates and charges will be applied on an equal percentage basis "across the board" to all customer classes. *Id.* at 6. In Mr. Brehm's opinion, the proposed rates and charges set forth in the Settlement Agreement are reasonable and just rates for charges and service. *Id.* at 3.

Mr. Brehm noted that Petitioner's proposed annual revenue requirements for the cost of fuel and debt service were not changed. *Id.* at 2. Mr. Brehm stated that the most significant adjustments were made to Citizens' proposed revenue requirements for operations and maintenance expenses and extensions and replacements. *Id.* In both instances, Mr. Brehm testified that the resulting revenue requirement was a result of arms length negotiations of the Parties' differing litigating positions. *Id.* Mr. Brehm stated that in his opinion, the proposed increase in operating revenues set forth in the Settlement Agreement will produce an income sufficient to maintain the steam utility property in a sound physical and financial condition so as to render adequate and efficient service to satisfy the requirements of Ind. Code § 8-1.5-3-8. *Id.* at 3.

Mr. Brehm testified that the Parties agreed that establishing Petitioner's extensions and replacements revenue requirement based on a four-year average as proposed by the CIG would provide Citizens with a level of funding that would allow it to maintain the safety, reliability and viability of the steam system. *Id.* at 4. Under the terms of the Settlement Agreement, the Parties did not remove any costs related to specific projects that the OUCC characterized as non-recurring. *Id.* In Mr. Brehm's

opinion, the use of a four-year average (rather than the three-year average proposed by the OUCC) smoothes out any inconsistencies relating to such costs. *Id.*

With respect to Citizens' revenue requirement for operations and maintenance ("O&M") expense, Mr. Brehm testified that Citizens agreed to reduce the amount of rate case expenses included in O&M expense by \$56,571. *Id.* at 5. According to Mr. Brehm, Citizens also agreed to reduce O&M expenses by \$489,098 relating to payroll costs associated with positions that have not yet been filled and to make corresponding adjustments for benefit costs and payroll taxes attributable to those employees (\$11,131 and \$39,662, respectively). *Id.* Citizens also accepted the OUCC's insurance expense adjustment of \$8,767. *Id.*

Mr. Brehm testified that Petitioner did not agree to reduce its proposed O&M revenue requirement based on CIG's recommendation that short-term and executive incentive pay, as well as supplemental pay, be excluded from Petitioner's cash revenue requirements and instead be "paid for out of the profitability of trust operations." *Id.* at 5-6. According to Mr. Brehm, absent short-term and executive incentive pay, Citizens employees and management would be compensated below the market median. *Id.* at 6.

Mr. Brehm also testified that Citizens agreed to increase its net revenues attributable to air emissions allowance sales from \$72,500 to \$133,665. *Id.* Although this amount is lower than the CIG's proposed five-year average, Mr. Brehm testified that it is the same amount Petitioner earned from air emissions allowance sales revenues in calendar year 2009. *Id.*

Mr. Brehm stated that the Parties have agreed that Citizens will continue to file its FAC applications on a quarterly basis and perform the earnings bank calculation in accordance with the procedures set forth in the Joint Stipulation and Settlement Agreement approved by the Commission in Cause No. 43201. *Id.* at 7. Mr. Brehm testified that, from Citizens' perspective, there was no reason to return to annual FAC filings as the quarterly FAC allows Petitioner to better forecast fuel prices, incorporate current operating conditions, and as a result, produce a more accurate forecast of fuel costs. *Id.* at 8. This results in Petitioner experiencing much smaller FAC variances, allowing for more appropriate and accurate revenue and cost matching and improved cash flow. *Id.*

Mr. Brehm also testified in support of the terms of the Settlement Agreement relating to the extension of the Agreement between Citizens and National Starch. *Id.* at 9. The Agreement is set to expire on February 15, 2011 and the Parties agreed to extend the Agreement by two years to February 15, 2013. *Id.* All other terms of the Agreement would remain unchanged. *Id.* The amendment extending the term of the Agreement will be filed with the Commission for its approval within 90 days after the final Order is issued in this proceeding. *Id.*

In Mr. Brehm's opinion, the terms of the Settlement Agreement represent a reasonable resolution of the issues raised by the Parties in this proceeding. *Id.* at 11. Mr. Brehm testified that the agreed-upon 9.26% increase in operating revenues is a reasonable compromise and results in additional benefits for each of the Parties. *Id.* The

Settlement Agreement also provides for the continuation of the long term planning process that has fostered a continuing dialogue among the Parties. *Id.* Mr. Brehm recommended that the Commission approve the Settlement Agreement in its entirety as consistent with the public interest. *Id.*

B. OUCC Evidence in Support of the Settlement Agreement. OUCC witness Eckert also testified that he believes that the Settlement Agreement is reasonable, just, and in the public interest and recommended the Commission approve the Settlement Agreement in its entirety. Public Ex. No. 1-S at 3. Mr. Eckert testified that the main feature of the Settlement Agreement, an increase in revenue requirements of approximately \$6.2 million and an across-the-board increase of approximately 9.2% over existing rates, was supported by the evidence. *Id.* at 1-2.

Mr. Eckert also noted that the change from annual FAC filings to quarterly FAC filings has worked well and makes Petitioner's quarterly FACs consistent with the other electric utility FAC filing periods. *Id.* at 2. Mr. Eckert also stated that he believes the two-year extension of the National Starch Agreement is reasonable. *Id.* at 3.

C. CIG Evidence in Support of the Settlement Agreement. CIG witness Gorman also recommended Commission approval of the Settlement Agreement, which he described as reasonable, consistent with appropriate ratemaking, and in the public interest. CIG Ex. MPG-S at 2. Mr. Gorman testified that the \$6.2 million increase to Petitioner's pro forma operating revenues, which is a 9.26% increase overall, is a figure very close to the mid-point range of the Parties' litigation positions. *Id.*

Mr. Gorman also testified that the Settlement Agreement incorporates and resolves non-monetary concerns raised by the Parties, such as Citizens' agreement to conduct a cost-of-service study in the next proceeding. *Id.* at 3. As such, Mr. Gorman testified that the Settlement Agreement represents a "comprehensive, fair, just and reasonable resolution of the disputes between the parties." *Id.*

8. Commission Analysis and Findings Regarding the Settlement Agreement. A settlement agreement will not be approved by the Commission unless it is supported by probative evidence. 170 IAC 1-1.1-17. Settlements presented to the Commission are not ordinary contracts between private parties. *United States Gypsum, Inc. v. Indiana Gas Co.*, 735 N.E.2d 790, 803 (Ind. 2000). Any settlement agreement that is approved by the Commission "loses its status as a strictly private contract and takes on a public interest gloss." *Id.* (quoting *Citizens Action Coalition v. PSI Energy, Inc.*, 664 N.E.2d 401, 406 (Ind. Ct. App. 1996)). Thus, the Commission "may not accept a settlement merely because the private parties are satisfied; rather [the Commission] must consider whether the public interest will be served by accepting the settlement." *Citizens Action Coalition*, 664 N.E.2d at 406. Furthermore, any Commission decision, ruling or order - including the approval of a settlement - must be supported by specific findings of fact and sufficient evidence. *United States Gypsum*, 735 N.E.2d 790 at 795 (citing *Citizens Action Coalition v. Public Service Co.*, 582 N.E.2d 330, 331 (Ind. 1991)). Therefore, before the Commission can approve the Settlement Agreement, we must determine whether the evidence in this Cause sufficiently supports the conclusion that the

Settlement Agreement is reasonable, just, and consistent with the purpose of Indiana Code § 8-1.5-3-8, and that such agreement serves the public interest.

In this case, the Commission has before it a large body of evidence with which to judge the reasonableness of the terms of the Settlement Agreement, including the Parties' agreement as to the level of annual operating revenues necessary to satisfy the "reasonable and just rates and charges for services" standard of Indiana Code § 8-1.5-3-8. Based upon our review of that evidence and consideration of the provisions in the Settlement Agreement and its Exhibits, we find the Settlement Agreement is within the range of the possible outcomes based on a weighing of the evidence and a reasonable resolution of the issues in this Cause.

With respect to Petitioner's annual revenue requirements, the Settlement Agreement provides a middle ground that the Parties deemed reasonable, notwithstanding their divergent views with respect to certain specific issues. Each of the revenue requirement elements constituting the agreed-to annual operating revenue amount were addressed by the Parties in their prefiled testimony and exhibits, or in the Settlement Agreement and its exhibits. Therefore, the Commission has been able to examine the basis for all of the components of the total revenue requirements and can see exactly how each disputed issue was resolved. We find the provisions of the Settlement Agreement regarding the proposed increase in Petitioner's operating revenues are reasonable for purposes of settlement and amply supported by the evidence of record.

We further find that the terms of the Settlement Agreement relating non-revenue requirement issues to be just and reasonable. The Parties have agreed to the continuation of the quarterly FAC. As OUCC witness Eckert noted, the change from annual FAC filings to quarterly FAC filings has worked well and renders Petitioner's quarterly FACs consistent with the other electric utility FAC filing periods. Public Ex. No. 1-S at 3.

With respect to the provision within the Settlement Agreement that provides for a two-year extension of the Agreement between Petitioner and National Starch, the Commission notes that this Agreement was originally approved in 2002 and was extended by agreement of the parties in the Petitioner's last rate proceeding utilizing the Commission's Thirty-Day filing process. The Commission also notes that the extension of the agreement in this proceeding was first presented in the Settlement Agreement and was not an issue that was considered by the Commission in this Cause.

Since the order in the last rate proceeding, which approved the initial extension of the Agreement, the Commission adopted administrative rules under 170 IAC 1-6-1 that specifically govern the use of the Thirty-Day filing process. The Commission's administrative rules governing the Thirty-Day filing process do not contemplate the extension of special agreements, sometimes referred to as "special contracts" that must be filed with the Commission under Ind. Code §§ 8-1-2-24 and 25. Therefore, the Commission rejects the provisions in the Settlement Agreement that extends the Agreement between the Petitioner and National Starch. If the parties wish to extend the current Agreement, this issue should be presented to the Commission for consideration in a separately docketed proceeding for this purpose.

For all of the foregoing reasons, we find the Settlement Agreement, as modified by the specific findings set-forth herein, is reasonable, supported by the evidence of record, is in the public interest and should be approved. We further find the tariff sheets attached to the Settlement Agreement as Joint Settlement Attachment 2 set forth rates and charges that are “nondiscriminatory, reasonable, and just” and should be approved.

With regard to future citation of the Settlement Agreement, we find the Settlement Agreement and our approval of it should be treated in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434 (IURC 3/19/97) and the terms of the Settlement Agreement regarding its non-precedential effect. The Settlement Agreement shall not constitute an admission or a waiver of any position that any of the Parties may take with respect to any or all of the items and issues resolved therein in any future regulatory or other proceedings, except to the extent necessary to enforce its terms.

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

1. The Settlement Agreement, a copy of which is attached to this Order and as modified by the specific findings set-forth herein, shall be and hereby is approved in its entirety, consistent with the findings herein. The terms and conditions thereof shall be and hereby are incorporated herein as part of this Order.

2. Petitioner is hereby authorized to immediately increase its rates and charges for steam service so as to produce additional annual operating revenues from retail sales of \$6,226,690, and total pro forma operating revenues of \$73,441,055, representing a 9.26% increase in operating revenues as shown in Joint Settlement Attachment 1.

3. Petitioner’s proposed changes to its terms and conditions for steam service, as set forth in Petitioner’s Exhibit CAJ-5 are hereby approved and Petitioner is authorized to implement its revised terms and conditions for steam service after filing the same with the Commission as set forth in paragraph 4 below.

4. Petitioner shall file with the Electricity Division of this Commission, prior to placing into effect the rates and charges and terms and conditions for steam service authorized herein, tariff schedules set out in accordance with the Commission’s rules for filing utility tariffs. Said tariffs, when filed by Petitioner, shall cancel all present and prior rates and charges concurrently when said rates and charges herein approved are placed into effect by Petitioner.

5. Petitioner’s request to utilize the Commission’s 30-day filing process for amending the “Agreement for Use of Industrial Steam Service between Citizens Thermal Energy and National Starch and Chemical Corporation” as contemplated by paragraph 7 of the Settlement Agreement is hereby rejected by the Commission. Any extension of this Agreement shall be presented to the Commission for review in a separately docketed proceeding for this purpose.

6. Petitioner shall pay the following itemized charges within twenty (20) days of the date of this Order to the Secretary of this Commission:

Commission Charges:	\$2,029.93
Legal Advertising:	77.13
OUCG Charges:	<u>7,658.39</u>
Total:	\$9,765.45

Petitioner shall pay all charges prior to placing into effect the rates and charges approved herein.

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

HARDY, ATTERHOLT AND MAYS CONCUR; LANDIS AND ZIEGNER ABSENT:

APPROVED:

MAY 11 2010

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

_____

**Brenda A. Howe
Secretary to the Commission**

OFFICIAL
EXHIBITS
BEFORE THE

FILED
March 19, 2010
INDIANA UTILITY
REGULATORY COMMISSION

INDIANA UTILITY REGULATORY COMMISSION

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 (1) AUTHORITY)
TO INCREASE ITS RATES AND CHARGES)
FOR STEAM UTILITY SERVICE, (2))
APPROVAL OF A NEW SCHEDULE OF)
RATES AND CHARGES APPLICABLE)
THERETO, AND (3) APPROVAL OF)
CHANGES TO ITS GENERAL TERMS AND)
CONDITIONS FOR STEAM SERVICE)

IURC
JOINT

EXHIBIT No. 1
3-31-10 AT
DATE REPORTER

CAUSE NO. 43821

**JOINT STIPULATION AND SETTLEMENT AGREEMENT
AMONG CITIZENS THERMAL, THE INDIANA OFFICE
OF UTILITY CONSUMER COUNSELOR AND
THE CITIZENS INDUSTRIAL GROUP**

On November 2, 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 ("Citizens"), filed with the Indiana Utility Regulatory Commission ("Commission") its Verified Petition for: (i) authority to increase its rates and charges for steam utility service; (ii) approval of a new schedule of rates and charges applicable thereto; and (iii) approval of certain changes to its general terms and conditions for steam service. On November 24, 2009, the Citizens Industrial Group ("CIG") filed a Petition to Intervene in this proceeding, which the Commission granted by Docket Entry dated December 4, 2009.

After their respective prepared testimony and exhibits were filed, Citizens, CIG and the Indiana Office of Utility Consumer Counselor ("OUCC") (collectively, the "Parties") communicated with each other regarding the possibility of settling the issues in

this Cause. Following negotiations, the Parties reached an agreement with respect to all of the issues presented in this proceeding. The Parties agree to the following matters and request the Commission to enter an agreed-upon final Order, which will be jointly filed by the Parties following the hearing on the settlement.

1. Citizens' Operating Revenues. The Parties have reached an agreement concerning Citizens' revenue requirements under IC 8-1.5-3-8, which agreement is reflected in the accounting schedules attached as Joint Settlement Attachment 1. The Parties agree that Citizens' pro forma at present rates operating revenues are \$67,214,365. The Parties agree that Citizens' pro forma operating revenues from retail sales should be increased by \$6,226,690 in arriving at the pro forma total operating revenues at proposed rates of \$73,441,055 representing a 9.26% increase in rates and charges from sales to retail customers.

2. Citizens' Annual Revenue Requirements. Citizens' annual revenue requirements determined pursuant to IC 8-1.5-3-8 on the evidence of record and agreed to by the Parties, are as follows:

a. Cost of Fuel. Citizens' annual revenue requirement for the cost of fuel is \$34,654,434.

b. Other Operating and Maintenance Expenses. Citizens' annual revenue requirement for other operating and maintenance expenses is \$26,496,451.

c. Taxes Other Than Income Taxes. Citizens' annual revenue requirement for taxes other than income taxes is \$970,184.

d. Extensions and Replacements. Citizens' annual revenue requirement for extensions and replacement is \$4,961,394.

e. Debt Service. Citizens' annual revenue requirement for debt service is \$6,355,907.

f. Non-Operating Revenue. The Parties agree that Citizens' total cash revenue requirement should be offset by the amount of Citizens' non-operating revenues, including interest income, in the amount of \$84,489.

g. Utility Receipts Tax. The Parties agree that Citizens' total cash revenue requirement should be increased by \$87,174 to account for the increase in Citizens' Indiana Utility Receipts Tax resulting from the proposed rate increase.

3. Citizens' Aggregate Annual Revenue Requirement. The Parties agree that Citizens' annual net revenue requirement is \$73,441,055, as detailed below:

Cost of Fuel	\$34,654,434
Other Operation and Maintenance Expense	\$26,496,451
Taxes Other Than Income Taxes	\$970,184
Extensions and Replacements	\$4,961,394
Debt Service	<u>\$6,355,907</u>
Total Revenue Requirement	\$73,438,370
Less: Non-Operating Revenues	(\$84,489)
Plus: Utility Receipts Tax (1.4% of increase)	<u>\$87,174</u>
Net Revenue Requirement	\$73,441,055

4. Amount of Stipulated Rate Increase and Approval of Changes to Rate Schedules. The Parties agree that Citizens' current rates and charges for service should be increased upon the Commission's adoption of a final Order approving the terms and conditions of this Settlement Agreement so as to produce additional operating revenues from retail sales of \$6,226,690, and total pro forma operating revenues of \$73,441,055, representing a 9.26% increase in operating revenues, as shown in Joint Settlement

Attachment 1. The foregoing rates and charges should produce an operating income of \$6,198,006, which amount should be used as the level of authorized earnings for Citizens when performing the Fuel Adjustment Calculation (“FAC”) earnings test. The Parties further agree the increase in Petitioner’s revenue requirement should be applied on an equal percentage basis across-the-board to all rate classes as reflected in the schedules of rates and charges attached hereto as Joint Settlement Attachment 2.

5. Quarterly FAC. The Parties agree that Citizens will continue to file its FAC applications on a quarterly basis, in accordance with the procedures set forth in paragraph 8 of the Joint Stipulation and Settlement Agreement approved by the Commission in Cause No. 43201. The Parties further agree that Citizens will continue to perform the earnings bank calculation as agreed upon in Paragraph 8 of the Joint Stipulation and Settlement Agreement in Cause No. 43201.

6. Miscellaneous Changes to Citizens’ General Terms and Conditions for Steam Service. The Parties agree that the miscellaneous revisions to Citizens’ General Terms and Conditions for Steam Service set forth in Petitioner’s Exhibits CAJ-5 and CAJ-6 and described in the direct testimony of Craig A. Jones, as adopted by LaTona S. Prentice, are “nondiscriminatory, reasonable, and just,” and should be approved by the Commission.

7. Long Term Planning. Citizens agrees to continue to biennially (i.e., once every two years) produce a “work plan” to highlight and describe its production planning process for the Steam System as provided for in paragraph 11 of the Joint Stipulation and Settlement Agreement approved by the Commission in Cause No. 43201. Citizens will include in each biennial work plan a disclosure of any new financing the steam utility

incurred during the reporting period and a description of the assignment of any debt service associated with such financing to the steam utility. Citizens also will continue to produce an “Environmental Challenges/Compliance Report” (either separately or as a section of the work plan) as further provided in paragraph 11 of the Joint Stipulation and Settlement Agreement approved in Cause No. 43201. Citizens will continue to provide the above-described work plan to the OUCC, CIG, and the Commission on a biennial basis. The “Environmental Challenges/Compliance Report” will continue to be provided to the OUCC, CIG and Commission annually. The Parties understand that the work plan and “Environmental Challenges/Compliance Report” may contain confidential, proprietary and trade secret information. The OUCC agrees to treat such information in accordance with the terms of the “Standard Form Non-Disclosure Agreement” entered into between Citizens and the OUCC. The CIG also agrees to treat such information in accordance with the terms of a mutually agreeable confidentiality agreement. To the extent any sections of the work plan or “Environmental Challenges/Compliance Report” are confidential, proprietary or trade secret, Citizens will be responsible for seeking appropriate protections from public disclosure in accordance with the provisions of 170 IAC 1-1.1-4.

6. Cost-of-Service Study. Citizens agrees to prepare and present to the Commission a cost-of-service study as part of its next general rate case.

7. Extension of Agreement with National Starch. The “Agreement for Use of Industrial Steam Service between Citizens Thermal Energy and National Starch and Chemical Corporation” (the “Agreement”) currently would expire on February 15, 2011. This Agreement was originally approved by the Commission on April 3, 2002 and a First

Amendment was approved on April 16, 2008. The First Amendment extended the initial term of the Agreement to February 15, 2011. The Parties agree that the Agreement will be further amended to extend by two years the date by which it would expire to February 15, 2013, and further agree that the amendment shall be filed with the Commission for its approval in accordance with the 30 day filing process set forth in 170 IAC 1-6 within 90 days after the final Order is issued. All other terms of the Agreement, including but not limited to the right of Citizens or National Starch and Chemical Corporation (“National Starch”) to terminate the Agreement at the end of any term by giving the other party written notice of its intention to terminate at least two years prior to the expiration of such term, shall remain unchanged. In the event that Citizens provides notice to National Starch of its intent to terminate the contract, Citizens agrees to negotiate in good faith the terms of a replacement steam service contract with National Starch during the time period between the giving of notice of termination and the end of the term.

8. Admission of Evidence. The Parties stipulate to the admission into evidence of each of the other parties’ pre-filed testimony and exhibits, and waive cross-examination of all witnesses. The Parties will jointly sponsor this Settlement Agreement and Joint Settlement Attachments 1 and 2 at the hearing in this Cause on the Settlement Agreement.

9. Effect of Settlement Agreement. This Settlement Agreement resolves all of the issues raised by the Parties in Cause No. 43821. By entry into this Settlement Agreement, the Parties intend to resolve any and all claims that were actually, or could have been, raised in the Petition and in the Parties’ pre-filed testimony and exhibits filed in this Cause.

10. Mutual Conditions on Settlement Agreement. The Parties agree for purposes of establishing Citizens' new steam rates and charges, and revised terms and conditions, that the provisions set forth in this Settlement Agreement are supported by probative evidence; and based on the Parties' independent review of the evidence; represent a fair, reasonable and just resolution of all the issues in this Cause, subject to their incorporation into a final Order without modification or further condition, which may be unacceptable to any Party. If the Commission does not approve this Settlement Agreement in its entirety and incorporate it into a final Order as provided above, it shall be null and void and deemed withdrawn and returned to litigation at the point the Settlement Agreement was tendered, unless otherwise agreed to in writing by each of the Parties. The Parties represent that there are no other agreements in existence between them relating to the matters covered by this Settlement Agreement.

11. Non-Precedential. As a condition precedent to the Settlement Agreement, the Parties condition their agreement on the Commission providing assurance in the final Order issued herein that it is not the Commission's intent to allow this Settlement Agreement or the Order approving it to be used as an admission or as a precedent against the signatories hereto except to the extent necessary to enforce the terms of the Settlement Agreement. The Parties agree that this Settlement Agreement shall not be construed nor be cited as precedent by any person or deemed an admission by any party in any other proceeding except as necessary to enforce its terms before the Commission, or before any court of competent jurisdiction on these particular issues. This Settlement Agreement is solely the result of compromise in the settlement process and except as provided herein is without prejudice to and shall not constitute a waiver of any position

that either of the Parties may take with respect to any or all of the items resolved herein in any future regulatory or other proceedings and, failing approval by the Commission, shall not be admissible in any subsequent proceedings.

12. Authority to Stipulate. The undersigned have represented and agreed that they are fully authorized to execute this Settlement Agreement on behalf of their designated clients who will be bound thereby.

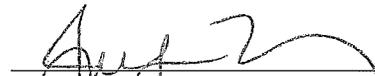
Accepted and Agreed on this 19th day of March, 2010.

INDIANA OFFICE OF UTILITY
CONSUMER COUNSELOR



By: Robert M. Endris
Indiana Office of Utility Consumer Counselor
National City Center
115 West Washington Street
Suite 1500 South
Indianapolis, Indiana 46204-2208

CITIZENS INDUSTRIAL GROUP



By: Jennifer W. Terry
Lewis & Kappes, P.C.
One American Square, Suite 2500
Indianapolis, Indiana 46282

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



By: Michael B. Cracraft
Steven W. Krohne
Hackman Hulett & Cracraft, LLP
111 Monument Circle, Suite 3500
Indianapolis, Indiana 46204-2030

Michael E. Allen
Citizens Thermal
2020 N. Meridian Street
Indianapolis, IN 46202

**Citizens Thermal
Cause No. 43821**

Line No.		A	B	C	D	E	F
		Petitioner Case-in-Chief	OUCC Case-in-Chief	CIG Case-in-Chief	Petitioner Rebuttal	Settlement Agreement 3/12/10	Change from Rebuttal
1	Revenue Requirements:						
2	Fuel Costs	\$ 34,654,434	\$ 34,654,434	\$ 34,654,434	\$ 34,654,434	\$ 34,654,434	\$ -
3	Operating Expenses	\$ 27,062,017	\$ 26,521,293	\$ 25,498,655	\$ 26,696,626	\$ 26,496,451	\$ (200,175)
4	Taxes Other Than Income Taxes	\$ 1,009,846	\$ 970,908	\$ 1,009,846	\$ 984,853	\$ 970,184	\$ (14,669)
5	Working Capital	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
6	Extensions and Replacements	\$ 6,183,474	\$ 4,299,631	\$ 4,961,394	\$ 6,183,474	\$ 4,961,394	\$ (1,222,080)
7	Debt Service	\$ 6,355,907	\$ 6,355,907	\$ 5,921,232	\$ 6,355,907	\$ 6,355,907	\$ -
8	Total Revenue Requirements	\$ 75,265,678	\$ 72,802,173	\$ 72,045,561	\$ 74,875,294	\$ 73,438,370	\$ (1,436,924)
9	Less Interest Income	\$ 84,489	\$ 137,520	\$ 272,509	\$ 84,489	\$ 84,489	\$ -
10	Add Other Expenses	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
11	Net Revenue Requirements	\$ 75,181,189	\$ 72,664,653	\$ 71,773,052	\$ 74,790,805	\$ 73,353,881	\$ (1,436,924)
12	Revenues at Current Rates	\$ 67,080,700	\$ 67,080,700	\$ 67,561,250	\$ 67,080,700	\$ 67,214,365	\$ 133,665
13	Net Revenue Increase Required	\$ 8,100,489	\$ 5,583,953	\$ 4,211,802	\$ 7,710,105	\$ 6,139,516	\$ (1,570,589)
14	IURT increase	\$ 115,017	\$ 79,285	\$ 115,017	\$ 109,474	\$ 87,174	\$ (22,300)
15	Recommended Increase	\$ 8,215,506	\$ 5,663,238	\$ 4,326,819	\$ 7,819,579	\$ 6,226,690	\$ (1,592,889)

**RATE 1
GENERAL STEAM SERVICE**

AVAILABILITY:

Available for space heating and other general service to customers located adjacent to the Utility's existing steam distribution mains. Not available for customers having an EDR (Equivalent Direct Radiation) of more than 30,000 square feet.

This service will be supplied on a year-round basis.

RATE:

The sum of the Customer Charge and the Energy Charge.

Customer Charge

0-1000 Sq. Ft. EDR	\$ 47.00/Month
1001-10000	116.00
10001-20000	232.00
20001-30000	462.00

Energy Charge

Any part of the first 1000 Therms	\$1.4810 per Therm
Any part of the next 4000 Therms	1.2328 per Therm
Over 5000 Therms	1.0847 per Therm

MINIMUM BILL PER MONTH:

The minimum bill will be the customer charge. Seasonal customers will receive bills during all months of the year even when no energy charge is due.

CONTRACT RIDERS APPLICABLE:

No. 1 - See Page 201.

PAYMENT:

The above rates and charges are net. If the net bill is not paid within seventeen days after its date of issue, a collection charge will be added in the amount of ten percent of the first three dollars, plus three percent of the excess of three dollars.

CONTRACT TERM:

Contracts, except special contracts, shall be for an initial term of three years and shall continue in effect thereafter for successive terms of one year each unless written notice of intention to terminate is given by either party to the other at least sixty days before the end of any term. Special contracts shall be for such term as may be agreed upon by the parties, subject to approval of the Indiana Utility Regulatory Commission.

Current base rates effective pursuant
to I.U.R.C. Order in Cause No. 43821

Effective:

**RATE 2
DEMAND RATE SERVICE**

AVAILABILITY:

Available to all steam customers located adjacent to the steam mains of the Utility, providing they contract for a minimum Billing Demand of 50 Therms per hour in the Month of maximum usage during the year, and providing billing will be continuous throughout all twelve Months of the year.

RATE:

The sum of the Demand Charge and the Energy Charge:

Demand Charge:

\$158.50 per Therm per Hour

Energy Charge:

\$ 0.2891 per Therm

BILLING DEMAND:

The Billing Demand shall be the maximum average Demand for a thirty-minute period, measured in Therms per hour, during the Month for which the bill is rendered, but in no case shall the Billing Demand be less than seventy-five per cent of the maximum thirty-minute Demand during the preceding eleven Months.

Where the character of the load is such that the steam demands fluctuate violently between maximum and minimum so that determination of an average thirty (30) minute Demand is impractical, then the Billing Demand will be based upon the average of the three highest peaks during the thirty (30) minute period.

MINIMUM BILL PER MONTH:

The minimum bill shall be the demand charge and, in no case, less than \$5,943.75 per Month.

CONTRACT RIDERS APPLICABLE:

No. 1 - See Page 201.

PAYMENT:

The above rates and charges are net. If the net bill is not paid within seventeen days after its date of issue, a collection charge will be added in the amount of ten percent of the first three dollars plus three percent of the excess of three dollars.

**Citizens Thermal
2020 North Meridian Street
Indianapolis, Indiana 46202**

Original Page No. 102-B

CONTRACT TERM:

Contracts shall be for an initial term of not less than three years and shall continue in effect thereafter for successive like terms. The Utility may require a special contract when unusual construction or equipment expense is necessary to furnish the service subject to approval of the Indiana Utility Regulatory Commission.

**Current base rates effective pursuant
to I.U.R.C. Order in Cause No. 43821**

Effective:

RATE 3
ADDITIONAL SUMMER SERVICE

AVAILABILITY:

Available to all steam customers for steam chilling and similar warm weather applications during the Months of April through October and on any day during the Months of November through March, when the mean temperature of the preceding day was 40°F. or higher as measured by the National Weather Office at the Indianapolis International Airport, unless the Utility notifies the customer that such Additional Summer Steam is not available. Customer agrees to contract for a minimum of 50 Therms per hour average usage for at least four Months of Additional Summer Steam during the Months of April through October, and provided further that the Utility will not furnish added capacity in services or mains at its expense under this rate.

In the event that the availability of Additional Summer Steam from the Resource Recovery Facility is not sufficient to supply all customers served under this rate under Provision A during any period, each customer will be provided up to the contract maximum hourly usage, in order of contract date, up to the amount of steam available during that period with this steam service billed under Provision B.

RATE:

Provision A:

Steam provided under this rate when available from the Resource Recovery Facility will be the sum of the following rate plus an adjustment for the actual cost of Resource Recovery Facility steam as provided for in the service contract.

ENERGY CHARGE:

\$0.0758 per therm

Provision B: Steam provided under this rate when not available from the Resource Recovery Facility will be:

ENERGY CHARGE:

\$0.0923 per therm

BILLING DEMAND:

No Billing Demand will be charged under this rate whether the steam is supplied under provision A or provision B above.

**Citizens Thermal
2020 North Meridian Street
Indianapolis, Indiana 46202**

Original Page No. 103-B

MINIMUM BILL PER MONTH:

The minimum Monthly charge shall be \$20.00 during the Months of April through October.

CONTRACT RIDERS APPLICABLE:

No. 1 - See Page 201 (Under Provision B Only).

CONTRACT:

Contracts shall be for an initial term of not less than three years and shall continue in effect for successive like terms. The contract shall specify the anticipated maximum hourly usage provided that the amount specified in the contract shall be adjusted after one year to reflect actual maximum usage. The Utility shall require a special contract in the event any added capacity is required specifying the method of payment for such capacity. Existing contracts shall continue in effect.