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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF SOUTHERN INDIANA GAS)
AND ELECTRIC COMPANY, INC., D/B/A)
VECTREN ENERGY DELIVERY OF)
INDIANA, INC., FOR APPROVAL OF AN)
ELECTRIC SERVICE CONTRACT WITH)
BERRY PLASTICS CORPORATION AND)
ESTABLISHMENT OF CONFIDENTIAL)
PROCEDURES)

CAUSE NO. 43831

APPROVED: MAR 03 2010

BY THE COMMISSION:

James D. Atterholt, Commissioner
David E. Veleta, Administrative Law Judge

On November 23, 2009, Southern Indiana Gas and Electric Company, Inc. d/b/a Vectren Energy Delivery of Indiana, Inc. ("Vectren South" or "Petitioner") filed its Verified Petition seeking approval from the Indiana Utility Regulatory Commission ("Commission") of an electric service contract ("Contract") with Berry Plastics Corporation ("Berry"). On November 23, 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 December 4, 2009, the Presiding Officers issued a docket entry in this Cause, granting Petitioner's Motion. On January 29, 2010, the Indiana Office of Utility Consumer Counselor ("OUCC") filed a public redacted version of the testimony of Ray L. Snyder, utility analyst. The OUCC and Petitioner's sought a protective order to file in this proceeding testimony containing confidential information including references to the Confidential Provisions. On February 4, 2010, the Presiding Officers issued a docket entry in this Cause, granting the Joint Motion.

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 1:30 p.m. on February 18, 2010. 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 an “electric 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 electric 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, transmission, distribution and furnishing of electric service throughout Indiana.

3. Relief Requested. Petitioner requests Commission approval of the Contract for certain electric services between Vectren South and Berry. 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 that the Contract resulted from Vectren South’s economic development efforts in attraction and retention of Berry’s headquarters and manufacturer expansion. He testified that Berry operates a plastic thermoform manufacturing facility located in Evansville, Indiana (“Berry Facility”) that is important to both Vectren South and the development efforts of the City of Evansville. The Berry Facility currently employs over 1,000 people in Evansville, is a long-time Vectren South customer and is one of Vectren South’s largest electric customers. Berry’s plastic manufacturing business continues to strengthen and Berry determined that an expansion was needed to increase profitability and expand market share. Mr. Bailey testified that Berry informed Vectren South that it was considering all geographic options for expansion including existing facilities in the United States as well as constructing a new facility in Southwestern Indiana outside Vectren South’s service territory. Berry was forthright regarding their strategic business plan including capital investment, job creation and an increase in energy requirements. Mr. Bailey explained that because of the significant economic benefits to Vectren South and the City of Evansville from the Berry expansion and retention of their headquarters, Vectren South engaged in good faith, arms length negotiations to assure Berry’s presence as a long term electric customer and Evansville business. These negotiations were successful and culminated in the execution of the Contract to provide electric service to Berry under the agreed-upon terms.

Mr. Bailey explained that the Public benefits from the Contract include millions of dollars in capital investment and the creation of up to approximately 300 jobs in the Evansville market resulting from the Berry expansion. The terms of the Berry Agreement encourages future expansion opportunities while providing a competitive rate structure promoting profitability and growth.

Mr. Bailey described the provisions of the Contract. The Berry Facility will be served under Rate LP, Large Power Service, except to the extent expressly modified by the Contract. Mr. Bailey testified the revenues resulting from Vectren South’s service to the Berry Facility

under the terms of the Contract will exceed its incremental cost of service for the expansion. As a result, the Berry Agreement ensures that Berry will provide the recovery of Vectren South's incremental costs and contribute to the recovery of fixed costs. Mr. Bailey testified the Contract will not adversely impact the adequacy or reliability of service provided to other customers, and that the rates contained in the Contract are practical and advantageous to Berry and Vectren South, in the public interest, and not inconsistent with the purpose of Indiana utility regulation.

Mr. Bailey testified that the Contract is reasonable and just. It continues a relationship between Vectren South and Berry which provides benefits to both parties as well as Vectren South's customers and the Southwestern Indiana economy. He explained that the Contract was the result of arms-length negotiations between two parties that are sophisticated in negotiating energy contracts, and represents the best result for both parties.

In the confidential unredacted version of his testimony Mr. Bailey described certain redacted portions of the Contract that are confidential and must be protected from public disclosure ("Confidential Provisions"). Mr. Bailey testified that these Confidential Provisions contain pricing, demand, term and other provisions that were negotiated between Berry and Vectren South on a confidential basis. Vectren South is likely to negotiate business retention contracts with other customers in the future. If these terms became generally known or readily available, parties in negotiation with Vectren South could use this knowledge against Vectren South. Knowledge of these terms 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 Vectren South and its customers. In other words, other customers would insist on the same or better terms as those negotiated with Berry. Additionally, disclosure of Berry's confidential cost, usage, operational and business planning information could be of value to its competitors and harmful to Berry. In sum, Vectren South and Berry both derive economic benefit from this information not being publicly available.

Mr. Bailey explained Vectren South has taken steps to maintain the confidentiality of this information. The Confidential Provisions have been the subject of efforts that are reasonable under the circumstances to maintain their secrecy. Within Vectren South, this information has been and will continue to be disclosed only to those persons directly involved with negotiating, obtaining approval of, and monitoring compliance with, the Berry Agreement. Vectren South has also entered into an agreement with Berry that protects the confidentiality of the Berry information. Accordingly, Vectren South requests the Commission find the Confidential Provisions to be excluded from public disclosure.

Mr. Ray Snyder testified on behalf of the OUCC. Mr. Snyder testified that he reviewed the unredacted version of Mr. Bailey's testimony, the unredacted Contract and confidential Vectren South discovery responses. In his confidential redacted testimony he described the Contract and his review of its benefits. Mr. Snyder concluded the Contract is beneficial and should 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 South to obtain revenues from provision of electric service to the expansion of Berry's operations. The Contract facilitates an economic expansion that will create new employment in southwest Indiana. 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.

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 is reasonable and just, practical and advantageous to Berry, Vectren South, and Vectren South'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 December 4, 2009 and February 4, 2010 docket entries in this Cause, the Confidential Information prefiled with this Commission by Petitioner and the OUCC 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 Special Contract for Electric Service by and between Petitioner and Berry Plastics are reasonable and just, are practical and advantageous to the parties thereto, and are not inconsistent with the provisions of Ind. Code § 8-1-2-1 *et seq.*
2. The Special Contract for Electric Service by and between Petitioner and Berry Plastics submitted in this Cause shall be and hereby is in all respects approved.
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.

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

APPROVED: MAR 03 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