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BEFORE THE

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 GAS FOR (1) APPROVAL OF THE ESTABLISHMENT OF GAS RATE NO. 40, LIQUEFIED NATURAL GAS SERVICE, TO BE EFFECTUATED THROUGH WRITTEN CONTRACTS SUBJECT TO THE REVIEW AND APPROVAL OF THE COMMISSION; (2) APPROVAL OF THE RATES AND CHARGES AND OTHER TERMS AND CONDITIONS SET FORTH IN A CONTRACT WITH FLATIRON POWER SYSTEMS ENTERED INTO PURSUANT TO GAS RATE NO. 40; AND (3) A FINDING THAT CERTAIN INFORMATION SUBMITTED IN THIS PROCEEDING IS CONFIDENTIAL AND EXEMPT FROM PUBLIC ACCESS REQUIREMENTS	)	**CAUSE NO. 43847** **APPROVED:** JUN 16 2010

BY THE COMMISSION:
James D. Atterholt, Commissioner
Aaron A. Schmoll, Administrative Law Judge

On January 21, 2010, the Board of Directors for Utilities of the Department of Public Utilities (the "Board") of the City of Indianapolis, as successor trustee of a public charitable trust, d/b/a Citizens Gas ("Petitioner," "Citizens Gas" or "Utility") filed with the Indiana Utility Regulatory Commission ("Commission") its Verified Petition in this Cause requesting the Commission for (i) approval of the establishment of Gas Rate No. 40, Liquefied Natural Gas Service; (ii) approval of the rates and charges and other terms and conditions set forth in a contract with Flatiron Power Systems ("Flatiron"); and (iii) a finding that certain information submitted in this proceeding is confidential and exempt from public access requirements.

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 222 of the National City Center, 101 West Washington Street on March 3, 2010 at 10:30 a.m. Proof of publication of notice of the Prehearing Conference was incorporated into the record and placed in the official files of the Commission. Counsel for Petitioner and the Indiana Office of Utility Consumer Counselor (the "OUCC") (each a "Party" and collectively the "Parties") appeared and participated in the Prehearing Conference. On March 10, 2010, the Commission issued a Prehearing Conference Order, which established a procedural schedule based upon the agreement of the Parties at the Prehearing Conference.

Contemporaneous with the filing of its Verified Petition on January 21, 2010, Petitioner prefiled its prepared case-in-chief consisting of the testimony and exhibits of Christopher H. Braun, Jill A. Phillips and Donald S. Lukes. The Verified Petition requested a finding that certain information to be submitted in this proceeding, including redacted portions of the testimony and exhibits Petitioner prefiled with its case-in-chief, is confidential and exempt from public access requirements. Mr. Lukes supported Petitioner's request for confidential treatment of that information in his verified prefiled testimony.

On March 17, 2010, the Presiding Officers issued a docket entry finding that there is a sufficient basis for a determination that certain information Petitioner considers confidential and intends to submit in this proceeding should be held as confidential by the Commission on a preliminary basis. The docket entry contained certain directives regarding submission of the confidential information. On March 29, 2010, Petitioner submitted the confidential information using the Commission's Electronic Filing System.

On April 8, 2010, the OUCC prefiled its case-in-chief consisting of the testimony and exhibits of Mr. Ray L. Snyder. On April 28, 2010, the OUCC filed a Notice of Intent to File Confidential Information and Motion for Protective Order (the "OUCC Motion"). The OUCC Motion stated that redacted portions of Mr. Snyder's testimony contain information that Petitioner provided the OUCC pursuant to a nondisclosure agreement the Commission previously found to be confidential. In support of the OUCC Motion, the OUCC submitted the Affidavit of Donald S. Lukes describing the nature of the confidential information included in the redacted portion of Mr. Snyder's testimony.

On April 30, 2010, the Presiding Officers issued a docket entry finding that there is a sufficient basis for a determination that the information OUCC sought to protect should be held as confidential by the Commission on a preliminary basis. The docket entry contained certain directives regarding submission of the confidential information. On April 30, 2010, Petitioner prefiled its prepared rebuttal case consisting of the rebuttal testimony of Donald S. Lukes. On May 3, 2010, the OUCC submitted the confidential information using the Commission's Electronic Filing System.

Pursuant to notice as provided by law, proof of which was incorporated into the record and placed in the Commission's official files, a public evidentiary hearing was commenced on May 19, 2010, at 9:30 a.m. in Room 224 of the National City Center, 101 West Washington Street, Indianapolis, Indiana. Petitioner and the OUCC appeared at that hearing. At the hearing, the prefiled testimony and exhibits described above, as well as a late-filed exhibit demonstrating Flatiron's authority to conduct business in the State of Indiana, were admitted into the record without objection. No members of the public were present or participated at the hearing.

On June 11, 2010, Petitioner late-filed Petitioner's Exhibit 2.

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

1. **<u>Notice and Jurisdiction</u>.** Notice of the public evidentiary hearing held on May 19, 2010, was given as required by law. Petitioner is a municipally-owned gas utility subject to

the jurisdiction of the Commission in the manner and to the extent provided by the laws of the State of Indiana, including certain sections of the Public Service Commission Act, as amended. The Commission has jurisdiction over the parties and the subject matter of this proceeding.

2. **Petitioner's Characteristics.** Petitioner is a municipally-owned gas utility. It owns, operates, manages and controls plant, property, equipment and facilities used and useful for the production, storage, transmission, distribution and furnishing of natural gas service to customers in and around Marion County, Indiana.

3. **Petitioner's Case-in-Chief Testimony.** In its case-in-chief, Petitioner offered the testimony of Christopher H. Braun, Jill A. Phillips and Donald S. Lukes. Mr. Braun, Petitioner's General Manager of Gas Operations, provided an overview of Petitioner's Liquefied Natural Gas ("LNG") facilities and the relief Petitioner is requesting in this proceeding. Mr. Braun explained that Petitioner owns two LNG facilities capable of storing 2 BCF of natural gas. He stated that the LNG facilities are used to support the Utility's overall system balancing requirements and meet Petitioner's "peak day "and "severe season" load demands. Mr. Braun noted that the Utility's LNG North facility is equipped with an LNG loading/unloading terminal where LNG can be delivered and received by tanker truck.

Mr. Braun explained that Petitioner is requesting approval of a proposed tariff that would facilitate the sales of LNG as a vehicle fuel (the "LNG Tariff") and, pursuant to the LNG Tariff, a contract pursuant to which Citizens Gas would sell LNG to Flatiron (the "Flatiron Contract"). He testified that the Utility has the capability to serve the LNG Tariff and Flatiron Contract and explained that service under each will be on an interruptible basis in order to ensure it will not have a detrimental impact on Citizens Gas's ability to serve its existing customers. Mr. Braun stated that minor upgrades at an estimated cost of $25,000[1] will be required to serve the LNG Tariff and Flatiron Contract. Finally, Mr. Braun discussed provisions in the LNG Tariff and Flatiron Contract addressing safety and operational issues and concluded that both documents adequately address all safety and operational concerns.

Ms. Phillips, Petitioner's Rates Manager, provided testimony describing the LNG Tariff (proposed Gas Rate No. 40—Liquefield Natural Gas Service) and demonstrating that the proposed rates and charges set forth in the Flatiron Contract will generate revenues necessary to cover incremental costs to serve Flatiron and provide a contribution to the recovery of the Utility's fixed costs. She first provided an overview of the proposed LNG Tariff, emphasizing that the tariff provides that service will be available on an interruptible basis when, in the sole discretion of the Utility, service can be rendered without impairing the quality of service to the Utility's End-Use Customers. Ms. Phillips explained that the Utility is proposing to offer service under the LNG Tariff as part of a pilot program to determine whether a market for LNG as a vehicle fuel can be developed. She stated that the proposed LNG Tariff provides for the availability and sale of LNG of up to 10,000 gallons per day from the LNG North facility on a first-come, first-served basis. She testified that service under the LNG Tariff will be made pursuant to a written contract between the Utility and the LNG customer, which contract will be

[1] As noted in the testimony of OUCC witness Ray L. Snyder, which is summarized below, Petitioner revised this estimate downward to $15,000.

subject to the approval of the Commission. Ms. Phillips also discussed the rates and charges set forth in the Flatiron Contract. She stated that the Flatiron Contract's rates and charges were negotiated at arms length and concluded they will not only allow the Utility to recover its incremental costs of providing service to Flatiron, but also will provide a contribution to the recovery of the Utility's fixed costs. Ms. Phillips testified that the rates and charges established in the Flatiron Contract are reasonable, just and economically advantageous to the Utility, Flatiron and Petitioner's other customers.

Mr. Lukes, the Board's Manager of Midstream Assets, also testified in support of the relief requested in the Verified Petition. Mr. Lukes first provided background information regarding the opportunity to generate economic benefit for the Utility's customers through the sale of LNG as transportation fuel for the heavy trucking industry. He also testified in support of the Flatiron Contract. Mr. Lukes described the events that led Citizens Gas to consider the use of LNG as a transportation fuel. He then explained the proposed LNG sales pilot program. Mr. Lukes stated that the purpose of the pilot is to assess whether a market for LNG as a transportation fuel can be developed in the Midwest over the next several years. He explained that Flatiron has an accelerated plan to leverage existing LNG peaking infrastructure in the central United States as the first step in developing a meaningful footprint for LNG as a fuel source for transportation. Mr. Lukes described Flatiron's business plan and testified that Flatiron's management has significant experience in the trucking and transportation industry. Mr. Lukes then described key terms of the Flatiron contract, including its rates and charges. He emphasized that the term of the contract ends on September 30, 2011, which is the earliest date the pilot program may be ended by the Utility.

Finally, Mr. Lukes addressed Petitioner's request that the Commission find certain information submitted in this proceeding confidential and exempt from public access requirements. Mr. Lukes testified that Citizens Gas and Flatiron agreed that the rates, charges, terms and conditions of Articles II, III and IV of the Flatiron Contract contain confidential information that derives independent economic value from not being generally known to or ascertainable by persons who can obtain economic value from its disclosure or use. He described the steps Petitioner and Flatiron take to maintain the secrecy of the confidential information and discussed the economic value that persons with whom Citizens Gas and Flatiron transact business or compete could realize from disclosure or use of the confidential information.

4. <u>OUCC Testimony</u>. Mr. Ray L. Snyder, Utility Analyst in the OUCC's Natural Gas Division, testified on behalf of the OUCC. He described his understanding of Petitioner's proposal, including his understanding of the proposed LNG Tariff, the proposed Flatiron Contract and a number of operational and other issues related to the proposed pilot program. Mr. Snyder testified that, based on the information provided by Petitioner, the rates and charges in the Flatiron Contract appear to be sufficient for Petitioner to cover all of the incremental costs of providing service to Flatiron and to contribute to Petitioner's recovery of its fixed costs. He further stated that a comparison of the historical relationships between NYMEX gas futures and the pump price of diesel in the Midwest indicates LNG should be competitive with diesel over a wide range of energy prices.

Mr. Snyder recommended approval of the proposed LNG Tariff, subject to the following conditions:

- The LNG Tariff is a pilot program, ending on or before September 30, 2011.
- Any extension of the LNG Tariff beyond September 30, 2011, would require:
  a. Evidence that the pilot was successful. Success would be determined by proof that the rates and charges for the sales of LNG are generating revenues necessary to cover incremental costs to serve LNG customer(s) and provide a contribution to the recovery of Petitioner's fixed costs.
  b. Approval by the Commission.

Mr. Snyder also stated that the OUCC does not oppose the proposed Flatiron Contract, subject to the following conditions:

- The Flatiron Contract is a pilot program which shall remain in effect until September 30, 2011, unless terminated earlier in accordance with the terms of the contract.
- Any extension or renewal of the Flatiron Contract (or any similar agreement) may not be offered beyond September 30, 2011, subject to the same conditions the OUCC outlined regarding extension of the LNG Tariff beyond September 30, 2011.
- Any extension or renewal of the Flatiron Contract (or any similar agreement) would require Commission approval.
- Commission approval is required for any and every future individual LNG sales contract, including all rates and charges in such contract. Evidence must be provided that the rates and charges will generate revenues necessary to cover incremental costs to serve the LNG customers and provide a contribution to the recovery of Petitioner's fixed costs.

Finally, Mr. Snyder described the OUCC's recommendations for monitoring the pilot program and Flatiron Contract. He stated that the Utility should provide a quarterly report to the OUCC and Commission with sufficient information to allow the OUCC and Commission to determine the net income realized from the sales of LNG to customers and the net contribution to the Utility's fixed cost recovery. Mr. Snyder stated that the report should include, but not be limited to, the following information:

- LNG sales volumes (both in gallons and dekatherms).
- LNG charge broken down as to: (a) fixed charge; (b) commodity charge; and (c) fuel gas charge.
- The variable cost of serving LNG customers.
- The cost of any incremental investments.
- The net contribution to the Utility's fixed cost recovery.

5. <u>Petitioner's Rebuttal Testimony</u>. Mr. Lukes provided rebuttal testimony on behalf of Petitioner. In his rebuttal testimony, Mr. Lukes clarified Petitioner's intent regarding termination of the pilot program and Petitioner's ability to enter into contracts during the pilot period that may have a term extending beyond September 30, 2011. Mr. Lukes stated that September 30, 2011, is the earliest date the pilot program may be ended by the Utility, as he described in his case-in-chief testimony. He stated that setting the initial ending date of September 30, 2011, in the Petition is viewed as an opportunity for Petitioner to discontinue the pilot if results from sales up to that time are adverse to Petitioner. Mr. Lukes emphasized that Petitioner will need the flexibility to enter into contracts with LNG purchasers with terms that extend beyond September 30, 2011, in order to ensure certain potential LNG purchasers can be persuaded to participate in the pilot program. He explained that the initial date for the end of the pilot program is only 17 months from the current date, which may not be a period of time sufficient enough to make a final determination of the potential of the market. Consequently, Mr. Lukes stated that while Petitioner proposes to make an assessment based on sales experience through September 30, 2011, information regarding any sales made under contracts whose terms extend beyond September 30, 2011, will also be helpful in evaluating the results of the pilot. Mr. Lukes pointed out that any contracts entered into pursuant to proposed Gas Rate No. 40, regardless of their terms, will require the Commission's approval.

Mr. Lukes then described the process proposed by Petitioner to communicate its decision regarding the need to extend the pilot beyond September 30, 2011. He proposed that Petitioner make a filing in this Cause on or before September 30, 2011, informing the Commission and the OUCC regarding any extension of the pilot period necessary to fully evaluate the potential for an LNG vehicle sales market in Indiana. Any extension of the pilot beyond September 30, 2012, would require Commission approval. If the pilot were to end on September 30, 2011, any contracts the Commission has approved with terms extending beyond September 30, 2011, would continue until the expiration of their terms.

Mr. Lukes next stated that Petitioner does not object to the conditions described by the OUCC regarding approval of the Flatiron contract. Mr. Lukes noted that any extension of that contract beyond September 30, 2011, or any amendment of that contract would require the Commission's approval. Mr. Lukes also testified that the other conditions Mr. Snyder recommends regarding the Commission's approval of future LNG sales contracts are consistent with the proposed LNG Tariff.

Finally, Mr. Lukes addressed the OUCC's other reporting recommendations, stating that Petitioner agrees providing the information suggested by Mr. Snyder would assist the OUCC and the Commission in evaluating the pilot program.

6. Discussion and Findings. Based on the evidence presented in this proceeding, we find Petitioner's requests for approval of the proposed LNG Tariff and the Flatiron Contract shall be approved. Mr. Braun testified that as General Manager of Gas Operations, he is actively involved in the ongoing review of Petitioner's customer needs and operational needs in order for Petitioner to continue to provide safe, adequate and reliable gas service. He testified that because service under the proposed LNG Tariff and the Flatiron Contract will be on an interruptible basis, such service will not have a detrimental impact on the Utility's ability to serve existing customers. We also note Mr. Braun's testimony that both the LNG Tariff and the Flatiron Contract adequately address all safety and operational concerns. We find that Petitioner has demonstrated its capability to provide service under the LNG Tariff without any detrimental impact on existing customers.

The uncontroverted evidence in this proceeding shows that the LNG Tariff and the LNG Contract are nondiscriminatory, reasonable and just. The LNG Tariff requires contracts entered into under that tariff to be approved by the Commission and to set forth rates and charges that are sufficient to recover the incremental costs to serve the LNG customer. Ms. Phillips testified that the Flatiron Contract meets the latter requirement and the rates and charges set forth in that contract will generate revenues necessary to cover incremental costs to serve Flatiron and provide a contribution to the recovery of Petitioner's fixed costs. The development of a market for LNG as a transportation fuel could prove beneficial to Petitioner's existing customers in that if the pilot is successful and the LNG Tariff is made permanent, revenues from future LNG sales under the LNG Tariff will be used to offset the Utility's pro forma revenue requirement in future rate cases. Moreover, as Mr. Lukes testified, adding LNG to Indiana's transportation fuel portfolio will support the Hoosier Homegrown Energy Plan put forward by Governor Daniels in 2006 and its objectives to develop alternative fuel technologies and improve the State's energy infrastructure both to lessen our dependence on foreign oil and facilitate job creation and investment here in Indiana. Finally, we note that the OUCC recommended approval of the proposed LNG Tariff and expressed no opposition to approval of the proposed Flatiron Contract.

We note that the terms of the Flatiron Contract state that the contract shall end on September 30, 2011. In order to allow sufficient time to evaluate the potential for developing an LNG transportation fuel sales market in Indiana, we find the pilot program shall end on September 30, 2012. On or before May 1, 2012, Petitioner shall make a compliance filing, under this Cause, informing the Commission and the OUCC regarding its intent to make the LNG Tariff permanent. Any request to make the LNG Tariff permanent shall require the Commission's approval in a separately docketed proceeding initiated by the filing of case-in-chief testimony by May 15, 2012. Additionally, Petitioner shall file as compliance filings, under this Cause, quarterly reports containing the information described above in Section 4. Requests for approval of additional contracts entered into pursuant to the LNG Tariff shall be sought by filing petitions and supporting testimony in separately docketed proceedings.

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

1. The proposed LNG Tariff and the rates, charges, terms and conditions contained therein are nondiscriminatory, reasonable and just and are hereby approved.

2. The proposed Flatiron Contract and the rates, charges, terms and conditions contained therein are nondiscriminatory, reasonable and just and are hereby approved.

3. Petitioner is hereby authorized and directed to implement the LNG Tariff and the Flatiron Contract.

4. Petitioner is hereby directed to make the compliance filings, under this Cause, described in the Discussion and Findings paragraphs of this Order.

5. The confidential information submitted in this Cause is determined to be confidential trade secret information as defined in Ind. Code § 24-2-3-2 and shall continue to be exempt from public access and disclosure pursuant to Ind. Code § 5-14-3-1 and § 8-1-2-29.

6. In accordance with Ind. Code § 8-1-2-70, within twenty (20) days from the date of this Order, Petitioner shall pay to the Secretary of the Commission the following itemized charges, as well as any additional costs that were incurred in connection with this Cause:

Commission charges:	\$ 772.64
OUCC charges:	\$ 1099.99
Legal Advertising Charges:	\$ 85.63
TOTAL:	\$ 1958.26

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

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

APPROVED: JUN 16 2010

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

Brenda A. Howe

Brenda A. Howe
Secretary to the Commission