

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF) CAUSE NO. 43897 U
SWITZERLAND COUNTY NATURAL GAS FOR A)
NEW SCHEDULE OF RATES AND CHARGES) APPROVED: JAN 05 2010

BY THE COMMISSION:

Carolene R. Mays, Commissioner
Jeffery A. Earl, Administrative Law Judge

On May 7, 2010, Switzerland County Natural Gas Company ("Petitioner") filed with the Indiana Utility Regulatory Commission ("Commission") its Request for Changes in Rates and Charges pursuant to Ind. Code § 8-1-2-61.5 and 170 IAC 14-1. On May 26, 2010, the Commission's Natural Gas Division issued a Memorandum stating Petitioner's application was incomplete. On June 1, 2010, Petitioner filed additional information in support of the Application, including a copy of its notice to customers as required by 170 IAC 14-1-2(b). On June 8, 2010, the Commission's Natural Gas Division issued a Memorandum stating Petitioner's application had been reviewed by the Commission's staff and was considered to be substantially complete.

On September 7, 2010, as required by 170 IAC § 14-1-4(a), the Indiana Office of Utility Consumer Counselor ("OUCC") filed its report, recommending changes to Petitioner's pro forma adjustments and the amount of Petitioner's cost of equity. On October 18, 2010, Petitioner notified the Commission it had reached a settlement with the OUCC, and Petitioner filed testimony in support of the settlement agreement on October 29, 2010.

Pursuant to Ind. Code § 8-1-2-61.5, a formal public hearing is not required in rate cases involving small utilities with fewer than 5,000 customers, unless a hearing is requested by at least ten customers, a public or municipal corporation, or by the OUCC. No requests for a hearing have been received by the Commission nor has the Commission determined the need for a hearing in this Cause. Accordingly, no hearing has been held.

Based upon the applicable law and the evidence presented herein, the Commission now finds as follows:

- 1. Commission Jurisdiction and Notice. The evidence presented reflects that legal notice of the filing of this small utility rate case was published in accordance with applicable law, and Petitioner has given proper notice to its customers of the nature and extent of the proposed rate increase. The Commission thus finds that due, legal, and timely notice of this matter was given and published as required by law. Further, the Commission finds that the Application satisfies all of the requirements of Ind. Code § 8-1-2-61.5 and 170 IAC 14-1. Therefore, this Commission has jurisdiction over the Petitioner and the subject matter of this proceeding, and may issue an Order in this Cause based upon the information filed as provided by 170 IAC 14-1-6.

2. **Petitioner's Characteristics.** Petitioner is a public utility organized and existing under the laws of the State of Indiana. Petitioner has its principal office at 105 E. Seminary Street, Vevay, Indiana. Petitioner is engaged in rendering natural gas utility service to the public in both rural and municipal areas of Switzerland County, Indiana. Petitioner owns, operates, manages, and controls plant and equipment used for the distribution and furnishing of such services.

3. **Test Period.** The test period selected for determining Petitioner's revenues and expenses reasonably incurred in providing natural gas service to its customers includes the twelve (12) months ending December 31, 2009. With adjustments for changes that are fixed, known, and measurable, the Commission finds this test period sufficiently represents Petitioner's normal operations to provide reliable data for ratemaking purposes.

4. **Relief Requested.** Petitioner's current base rates and charges were established in the Commission's August 31, 2005 Order in Cause No. 43844. Petitioner originally sought an increase of 22.81% in its base rates and charges.

5. **OUCR Report.** The OUCR filed its Report on Petitioner's Application for Rate Change, accompanied by the testimony of Sherry Beaumont, Jon Dahlstrom, Mark Grosskopf, and Bradley Lorton. The Report indicates the OUCR has conducted an analysis of the Utility's application, reviewed the Utility's books and records, analyzed responses to discovery, reviewed historical documents, and discussed various issues with team members. As a result, the OUCR has accepted certain pro forma adjustments proposed by the Petitioner. Additionally, the Report suggests additional pro forma adjustments to revenue, payroll, pension, director fees, rate case expense, payroll taxes, IURC fee, bad debt, cost of equity, various taxes, and the resulting net operating income. The result of the OUCR's recommendations would be an increase of \$55,315 in additional operating revenue.

6. **Settlement Agreement.** Petitioner filed a Settlement Agreement resolving all issues with the pro forma adjustments, rate base, and capital structure discussed in the OUCR's Report. 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). When the Commission approves a settlement, that settlement "loses its status as a strictly private contract and takes on a public interest gloss." Id. (quoting Citizens Action Coalition v. PSI Energy, 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.

Further, any Commission decision, ruling, or order – including the approval of a settlement agreement – must be supported by specific findings of fact and sufficient evidence. United States Gypsum, 735 N.E.2d at 795 (citing Citizens Action Coalition v. Public Service Co., 582 N.E.2d 330, 331 (Ind. 1991)). The Commission's own procedural rules require that settlements be supported by probative evidence. 170 IAC 1-1.1-17(d). Therefore, before the Commission can approve the Settlement Agreement, we must determine whether the evidence in

this Cause sufficiently supports the conclusions that the Settlement Agreement is reasonable, just, and consistent with the purpose of Indiana Code § 8-1-2, and that such agreement serves the public interest.

The terms of this Settlement Agreement should not be used as precedent in any other proceeding or for any other purpose, except to the extent necessary to implement or enforce its terms. Consequently, with regard to future citation of the Settlement Agreement, we find that our approval herein should be construed in a manner consistent with our finding in Richmond Power & Light, Cause No. 40434, 1997 Ind. PUC LEXIS 459 (Ind. Util. Reg. Comm'n March 19, 1997).

7. Commission Findings

A. Rate Base. Petitioner's Application originally requested an increase in its rates reflecting a used and useful rate base of \$745,861, calculated on an original cost basis as of December 31, 2009. The OUCC's Report and accompanying schedules propose a rate base of \$741,414. The Parties agreed to a rate base of \$744,058. This slight difference, as explained by the Settlement Agreement, flows from the OUCC's use of a different working capital amount, resulting from the OUCC's modification of pro forma adjustments to Petitioner's Operations and Maintenance expenses. The Parties have agreed to a working capital element in Petitioner's rate base of \$39,378. In light of agreement of the Parties, and recognizing this is a small utility filing, the Commission finds the Settlement Agreement's proposed rate base value of \$744,058 is reasonable on an original cost basis and will establish Petitioner's revenue requirement on the basis of such rate base.

B. Capital Structure. The Petitioner and the OUCC have agreed to the test year capital structure except as to the return on common equity. The Petitioner originally requested a return on equity of 11.15%. The OUCC proposed a return on equity of 9.70%. The OUCC and Petitioner agreed to a return on equity of 9.90%. This difference in return on equity causes a difference in the overall return on Petitioner's rate base. Petitioner, in its original filing, sought an 8.68% return on rate base. The OUCC, as part of its Report, proposed an 8.07% overall return on rate base. The Parties agreed to an overall return on rate base of 8.16%.

Due to Petitioner's small size, neither Petitioner nor the OUCC performed a cost of equity study. However, the OUCC's internal CAPM and DCF analysis supports a cost of equity up to 9.70%. The Parties have agreed to a cost of common equity of 9.90%. In light of the evidence and the parties' agreement, we find Petitioner's capital structure as of December 31, 2009, to be that reflected below, and find that the Parties' proposed return on rate base of 8.16% is reasonable and will include it as part of the establishment of Petitioner's revenue requirement.

Capital Structure

<u>Description</u>	<u>Amount</u>	<u>Percent of Total</u>	<u>Cost</u>	<u>Weighted Cost</u>
Common Equity	\$194,408	41.97%	9.90%	4.16%
Customer Deposits	\$9,905	2.14%	6.00%	0.13%
Long Term Debt	\$257,423	55.58%	6.97%	3.87%
Deferred Taxes (Net)	<u>\$1,448</u>	<u>0.31%</u>	0.00%	<u>0.00%</u>
TOTAL	\$463,184	100.00%		8.16%

C. **Operating Revenues.** As reflected by the OUCC Report, and the accompanying schedules, the OUCC objects to Petitioner's proposed revenue adjustments regarding lost customers and weather normalization. The Petitioner initially proposed an adjustment to recognize lost customers and their dekatherms of usage. The OUCC recognized that Petitioner used the actual customer decline in 2009 for the forecasted customer decline next year. Petitioner did not provide evidence that this decline would continue in subsequent years; therefore, the OUCC reduced the test year revenues by \$4,837. The OUCC also noted there was a mathematical error in the calculation for the normalization of warmer than normal weather. With the correction, the OUCC reduced test year revenues by \$588. The Parties agreed to both adjustments as reflected in the Settlement Agreement, which results in an agreed Operating Revenues of \$555,889. In light of the evidence and the Parties' agreement, the Commission finds the proposed operating revenue amount is reasonable and authorizes Petitioner to earn total annual revenues of \$555,889.

D. **Operating Expenses.** As reflected in the OUCC report and accompanying schedules, the OUCC objected to several of the Petitioner's proposed operating expenses, which are discussed in detail below.

(1) **Payroll.** Petitioner included, as part of its direct case, the cost of a new operation employee. The OUCC proposed an adjustment of \$2,000 less than the Petitioner's adjustment based on payroll records at the time of employment. Petitioner responded, explaining that at initial employment, the new employee was receiving a probationary salary less than his current salary. Based on this evidence, the Parties have agreed to use the adjustment of \$40,034 as initially proposed by the Petitioner.

(2) **Pension.** Based upon the proposed adjustment to payroll described above, the OUCC also proposed changes to Petitioner's pension expense. Under the Settlement Agreement, no change to payroll expense was included, and thus, the Parties have agreed to Petitioner's original pension expense figure of \$3,986.

(3) **Rate Case Expense.** Petitioner originally requested the anticipated cost of outside consultants for the rate case, the cost of changes to the customer billing software, recovery of unamortized rate case costs from the previous proceeding, and the cost of implementing an NTA process for the Petitioner be amortized over three years. The OUCC eliminated recovery of the unamortized rate case cost because it will be fully amortized prior to new rates going into effect. In addition, the OUCC eliminated the cost of implementing an NTA process due to lack of approval for an NTA and recommended amortizing the remaining expenses over five years rather than three. The Parties have agreed that rate case expense should include all the elements of the Petitioner's adjustment except for the unamortized amount from the previous rate case and to the use of a five year amortization period. Therefore, as reflected in the Settlement Agreement, Parties agree to reduce the test year expense by \$17,837.

(4) **Director's Fees.** Petitioner made no adjustment to the director's fees that were paid during the test year at the rate approved in Cause No. 42844. The OUCC proposed a reduction in director's fees, arguing the fees are excessive for a utility of such small size. Petitioner does not employ a CEO for the utility. The Board of Directors performs this function as part of their duties. The Parties have agreed to include in rates the cost of 12 monthly meetings for 5 directors at the currently approved monthly rate of \$600 per director. In addition to documenting attendance of each director and the orders of business of each meeting in the utility's board minutes, Petitioner also agrees to document all work by the directors outside of board meetings on a monthly time report and/or the Minutes of the Meeting of the Board of Directors showing topic of work, date of work, and hours worked on utility business. As reflected in the Settlement Agreement, the Parties agree to reduce the test year expense of \$38,400 to \$36,000.

(5) **IURC Fee, Utility Receipts Tax, Federal Income Tax, and State Income Tax.** The Parties agree on the appropriate calculation for the IURC Fee, Utility Receipts Tax, Federal Income Tax, and State Income Tax based upon the various adjustments to revenues and expenses discussed above.

(6) **Total Operating Expenses.** The Commission has reviewed the agreed adjustments to Petitioner's Operating Expenses discussed above. In light of the evidence and the Parties' agreement, we find the adjustments are reasonable and will incorporate the same as part of Petitioner's revenue requirement below.

E. Revenue Requirement. The Table below summarizes the final pro forma net operating income statement agreed upon by the Parties.

	Test Year 12/31/09	Adjustments	Pro-Forma Present Rates	Adjustments	Pro-Forma Proposed Rates
<u>Operating Revenues</u>					
Gas Sales	\$ 1,639,196	\$ (1,174,683)	\$ 464,513	\$ 79,877	\$ 544,390
Other Gas Revenues	11,499	-	11,499	-	11,499
Total Operating Revenues	1,650,695	(1,174,683)	476,012	79,877	555,889
<u>Operating Expenses</u>					
Natural Gas Purchased	1,212,611	(1,171,666)	40,945	-	40,945
Other Operation & Maintenance	287,173	27,848	315,021	660	315,681
Depreciation & Amortization	87,485	3,086	90,571	-	90,571
Taxes Other Than Income Taxes	50,222	(15,238)	34,984	1,118	36,102
Income Taxes	(1,028)	(4,536)	(5,564)	17,438	11,874
Total Operating Expenses	1,636,463	(1,160,507)	475,956	19,216	495,172
Net Operating Income	\$ 14,232	\$ (14,176)	\$ (56)	\$ 60,660	\$ 60,716

The Parties agree Petitioner's operating revenues under its current rates and charges do not adequately cover Petitioner's reasonable operating expenses, including a reasonable return, for its service to customers. Therefore the Parties propose that Petitioner should be authorized to increase its rates and charges in order to give it a reasonable opportunity to fund ongoing operating expenses and provide a reasonable return on its investment. Based on our findings above, and noting the Parties' agreement as to an appropriate pro forma net operating income as shown on the Petitioner's Settlement Agreement Schedules, we find that the Petitioner should increase its current rates and charges, exclusive of the cost of gas, in order to produce additional operating revenue of \$79,877. Such change in its rates and charges should give Petitioner a reasonable opportunity to collect total operating revenues, net of gas costs, of \$555,889 resulting in an opportunity to earn a net operating income of \$60,716.

Having examined the calculations above, the Commission finds the calculations represent the agreement of the Parties, are supported by sufficient evidence, and should be approved. Therefore, Petitioner is authorized to earn total annual revenues, net of gas costs of \$555,889.

8. Normal Temperature Adjustment. The Parties agree to the use of a Normal Temperature Adjustment mechanism ("NTA"). Petitioner's gas rates, which include a component for Petitioner's fixed costs, were designed on the basis of an expected volume of gas to be sold to customers under normal weather conditions. Therefore, if weather conditions are warmer than normal, resulting in a lower volume of gas sales, Petitioner would under-recover its fixed costs. Conversely, if weather conditions are cooler than normal, resulting in a higher volume of gas sales, Petitioner would over-recover its fixed costs.

The NTA ensures Petitioner recovers its authorized fixed costs regardless of weather, and also ensures customers pay only the level of fixed costs authorized in this rate case. The Commission has previously approved an NTA similar to that proposed under the Settlement Agreement in Cause Numbers 43107, 43108, 43109, 43110, 43135, 13136, 43137, and 43141. Petitioner currently has a customer education program in place to inform customers about the NTA. Therefore, the Commission finds the NTA proposed in the Settlement Agreement will

provide a benefit to customers and is consistent with the NTAs approved in the Cause Numbers listed above. As a result, the Commission approves Petitioner's use of the NTA.

9. **Rate Structure.** Petitioner did not file a new cost of service study in this Cause. Rather, Petitioner proposes to utilize the cost of service study used during the previous rate case. The Commission has reviewed the cost of service study and finds the results to be fair and reasonable. Petitioner has also filed revised tariffs, which reflect the adjustments to Petitioner's revenue requirement outlined above and the results of the cost of service study. Having reviewed the revised tariffs, the Commission finds they are reasonably calculated to generate total annual revenues of \$555,889.

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

1. Consistent with the findings above, Switzerland County Natural Gas Company is authorized to increase its rates and charges by \$79,877 annually, so as to produce total annual revenues of \$555,889.

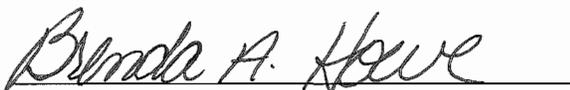
2. The Normal Temperature Adjustment mechanism proposed by Switzerland County Natural Gas Company is approved and authorized.

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

ATTERHOLT, LANDIS, MAYS AND ZIEGNER CONCUR:

APPROVED: JAN 05 2011

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



Brenda A. Howe
Secretary to the Commission