

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF SOUTHERN INDIANA GAS AND)
ELECTRIC COMPANY d/b/a VECTREN)
ENERGY DELIVERY OF INDIANA, INC. FOR)
APPROVAL OF A SPECIAL CONTRACT FOR)
ELECTRIC SERVICE WITH SABIC)
INNOVATIVE PLASTICS HOLDING, B.V. AND)
ESTABLISHMENT OF CONFIDENTIAL)
PROCEDURES)

CAUSE NO. 43901

APPROVED: SEP 22 2010

BY THE COMMISSION:

David E. Ziegner, Commissioner
Scott R. Storms, Chief Administrative Law Judge

On May 20, 2010, 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 Agreement for Electric Power Service ("New SABIC Contract") with SABIC Innovative Plastics Mt. Vernon LLC ("SABIC") for the provision of electric utility service to SABIC's plant located at Mount Vernon, Indiana (the "Mt. Vernon Facility").

On June 14, 2010, a Prehearing Conference was held at which time a procedural schedule was agreed to as reflected in the Commission's Prehearing Conference Order dated June 23, 2010.

On June 28, 2010, Petitioner filed the verified direct testimony of Thomas L. Bailey, Petitioner's Director, Industrial Sales, in support of the Petition. Attached to Mr. Bailey's verified direct testimony were (i) a public redacted version of the New SABIC Contract and (ii) a public redacted version of the affidavit of Joseph Castrale, SABIC's General Manager (the "Castrale Affidavit"). Mr. Castrale's Affidavit addressed the contribution made by the Mt. Vernon Facility to Indiana's economy, SABIC's relationship with Petitioner and the importance of the New SABIC Contract for the maintenance of production at the Mt. Vernon Facility. On the same date, Petitioner filed a Motion for Protective Order seeking the establishment of confidential procedures to protect as trade secrets the pricing and certain other provisions contained in the New SABIC Contract and certain information contained in the Castrale Affidavit (collectively "Confidential Information"). On July 2, 2010, the Presiding Officers issued a docket entry in this Cause, granting Petitioner's Motion for Protective Order on a preliminary basis and ordering Petitioner to submit an unredacted copy of the New SABIC Contract to the Chief Administrative Law Judge under seal. On July 28, 2010, the Indiana Office of Utility Consumer Counselor ("OUCC") filed its Notice of Intent Not to File Testimony.

Pursuant to the Prehearing Conference Order and notice of hearing given as provided by law, an Evidentiary Hearing was held in this Cause at 10:30 a.m. on September 13, 2010, in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana,. Proofs of publication of the notices of hearing were incorporated into the record and placed in the official files of the Commission. Petitioner and the OUCC participated in the hearing. No members of the general public appeared or sought to testify at the hearing.

The Commission, being duly advised in the premises based upon the applicable law and the evidence herein, 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” within the meaning of that term as used in the Public Service Commission Act, as amended (the “Act”), 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 utility 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 utility service throughout Indiana.

3. Relief Requested. Petitioner requests Commission approval of the New SABIC Contract. Petitioner also requests the Commission find that certain provisions of the New SABIC Contract and the Castrale Affidavit contain trade secrets as defined in Indiana Code § 24-2-3-2 and are exempt from the public access and disclosure requirements contained in Indiana Code §§ 5-14-3-3 and 8-1-2-29.

4. Petitioner's Direct Evidence. Mr. Bailey testified that the New SABIC Contract was negotiated to replace the longstanding contract between Vectren South and SABIC for electric utility service to the Mt. Vernon Facility that expired in December 2009.¹ He testified that the Mt. Vernon Facility is a plastics manufacturing facility located in Mount Vernon, Indiana that is important to both Vectren South and the economy of Southwestern Indiana. Vectren South has provided electric service to SABIC (or its predecessor GE Plastics) for approximately 50 years. The Mt. Vernon Facility currently employs approximately 1,200 people and is Vectren South’s largest electric customer. In 2007, GE sold its entire plastics division, including the Mt. Vernon Facility, to SABIC. SABIC is a subsidiary of SABIC Innovative Plastics Holding, B.V., a Saudi Arabian domiciled corporation with many business interests, headquartered in the world’s largest oil production region.

¹ The existing agreement was originally approved by the Commission’s Order in Cause No. 40684 dated February 5, 1997 and was subsequently amended on several occasions. Mr. Bailey explained in his testimony that the expired special contract expressly provided that the contract terms would remain in effect until the parties successfully negotiated a new contract.

Mr. Bailey explained that petroleum is the single largest material input into the plastics manufacturing process. The Mt. Vernon Facility competes with external plastic companies and other SABIC global locations which also produce Lexan, the main type of plastic product produced at the Mt. Vernon Facility. In order to remain competitive, including against other SABIC-owned facilities that receive government subsidies (e.g., in Spain), the Mt. Vernon Facility must maximize efficiency and provide cost competitive service. SABIC's completion of construction of a new plastics manufacturing plant in Saudi Arabia is expected to increase pressure on production at the Mt. Vernon Facility, given the newness of the Saudi Arabian facility and its strategic location in an oil production area. Mr. Bailey testified that SABIC continually reviews opportunities to cut costs and shift production to the extent efficiencies can be achieved. He explained that the technologies specific to the Mt. Vernon Facility could readily be transferred to other facilities in the world closer to vital plastic input products such as petroleum. The global recession has also had an impact on the Mt. Vernon Facility by increasing pressure to contain costs. In efforts to streamline its production, the Mt. Vernon Facility has reduced the number of employees by 200 since the sale of the facility to SABIC in 2007. Mr. Bailey stated that levels of production at the Mt. Vernon Facility have declined as a result of the global recession.

Mr. Bailey explained that because of the significant economic benefits to Vectren South and Southwestern Indiana from the Mt. Vernon Facility, Vectren South engaged in good faith, arms-length negotiations to assure SABIC's presence as a long term electric customer and regional business. These negotiations were successful and culminated in the execution of the New SABIC Contract to serve the electric requirements of the Mt. Vernon Facility under the agreed-upon terms.

Mr. Bailey explained that the terms of the New SABIC Contract support the retention and potential growth of production of Vectren South's largest electric customer while providing a competitive rate structure promoting profitability and long-term sustainability at the plant. It encourages further retention of employees at a time when unemployment levels across the region remain high and supports potential economic development for the region. Mr. Bailey stated that the New SABIC Contract will allow SABIC to continue high levels of production and reduce the uncertainty of lay offs for its employees.

Mr. Bailey indicated that SABIC will pay demand charges, minimum monthly charges and minimum annual charges, all as set forth in the New SABIC Contract. These charges are subject to change when the Commission approves changes in Rate HLF demand-related charges in future cases after Vectren South's pending electric rate case (Cause No. 43839). SABIC will also pay fuel charges and variable production charges as set forth in the New SABIC Contract. SABIC will pay the applicable riders, appendices, adjustments and any other service related charges set forth in the Rate HLF or successor rate schedule, including environmental charges. Mr. Bailey testified that no additional capital investment is needed to serve the Mt. Vernon Facility under the New SABIC Contract. As a result, the revenues resulting from Vectren South's service to the Mt. Vernon Facility under the terms of the New SABIC Contract will ensure a contribution to Vectren South's recovery of its fixed costs. The New SABIC Contract sets a minimum demand charge throughout its term, guaranteeing Vectren South's level of cost recovery regardless of changes to operations. The demand charge provisions of the New SABIC Contract will allow SABIC to compete for new product lines, encouraging additional revenues

and employment opportunities. Mr. Bailey testified the New SABIC Contract will not adversely impact the adequacy or reliability of service provided to other customers, and that the rates contained in the New SABIC Contract are practical, advantageous and beneficial to SABIC and Vectren South, in the public interest, and not inconsistent with the purpose of Indiana utility regulation.

Mr. Bailey testified that the New SABIC Contract continues a relationship between Vectren South and SABIC that provides benefits to both parties as well as Vectren South's customers and the Southwestern Indiana economy. He explained that the New SABIC Contract was the result of arms-lengths negotiations between two parties that are sophisticated in negotiating energy contracts.

Mr. Bailey described generally the Confidential Information contained in certain provisions of the New SABIC Contract and the Castrale Affidavit that need to be protected from public disclosure. Mr. Bailey testified that the Confidential Information includes pricing, demand, term and other provisions that were negotiated between SABIC and Vectren South on a confidential basis. In addition, the Castrale Affidavit includes Confidential Information related to the cost of electricity at the Mt. Vernon Facility, conversion costs and electrical efficiency improvements. 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 which would adversely affect Vectren South's negotiating position, thereby limiting the potential benefits that could accrue to Vectren South and its customers from future special contracts. Additionally, disclosure of SABIC's confidential cost, usage, operational and business planning information could be of value to its competitors and harmful to SABIC's competitive position. In sum, Vectren South and SABIC 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 Information has 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 New SABIC Contract. Vectren South has also entered into an agreement with SABIC that protects the confidentiality of the SABIC information. Accordingly, Vectren South requests the Commission find the Confidential Information to be excluded from public disclosure.

5. OUC's Position. The OUC filed its Notice of Intent Not to File Testimony in this Cause, stating that the OUC had reviewed the Petition and all attachments thereto and conducted discovery and it did not oppose the special contract at issue herein.

6. Commission Discussion and Findings. Vectren South seeks approval of the New SABIC Contract under the provisions of Indiana Code § 8-1-2-24 ("Section 24") and § 8-1-2-25 ("Section 25"). 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 New SABIC Contract and the evidence submitted in support of the New SABIC Contract satisfy all of the legal requirements imposed by Sections 24 and 25. The New SABIC Contract will result in enabling Vectren South to obtain revenues from provision of electric service to SABIC's Mt. Vernon Facility operations. The New SABIC Contract facilitates retention and potential growth of production by Vectren South's largest electric customer that will encourage further retention of employees at a time when unemployment levels across the region remain high. The evidence shows that no additional capital investment is needed to serve the Mt. Vernon Facility under the New SABIC Contract and an inspection of the Confidential Information demonstrates that the rates provide for 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 New SABIC Contract, sufficient to merit and support its approval. The Commission finds that the New SABIC Contract is reasonable, just, practicable, advantageous and beneficial to SABIC, 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.

7. **Confidential Information.** Pursuant to the July 2, 2010 docket entry in this Cause, the Confidential Information prefiled with this Commission by Petitioner was found to be confidential on a preliminary basis. This Commission's further *in camera* inspection reveals that the Confidential Information constitutes trade secrets as defined in Indiana Code § 24-2-3-2, and therefore should be exempted from the public access and disclosure 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 Information contains 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 Agreement for Electric Power Service by and between Petitioner and SABIC Innovative Plastics Mt. Vernon LLC are reasonable, just, practicable, advantageous and beneficial to the parties thereto, and are not inconsistent with the provisions of Ind. Code § 8-1-2-1 *et seq.*

2. The Agreement for Electric Power Service by and between Petitioner and SABIC Innovative Plastics Mt. Vernon LLC submitted in this Cause shall be and hereby is in all respects approved.

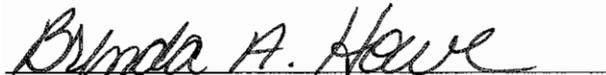
3. The Confidential Information identified in Petitioner's Motion For Protective Order and described herein is determined to be confidential trade secret information as defined in Indiana Code § 24-2-3-2 and shall continue to be exempt from public access and disclosure pursuant to Indiana Code § 5-14-3-3 and § 8-1-2-29.

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

HARDY, ATTERHOLT, LANDIS AND ZIEGNER CONCUR; MAYS NOT PARTICIPATING:

APPROVED: SEP 22 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