

ORIGINAL

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 GAS, REQUESTING (1) )  
APPROVAL OF A REINSTATEMENT AND )  
AMENDMENT OF GAS TRANSPORTATION )  
AGREEMENT AND (2) A FINDING THAT )  
CERTAIN INFORMATION IS )  
CONFIDENTIAL AND EXEMPT FROM )  
PUBLIC ACCESS REQUIREMENTS )

CAUSE NO. 43993

APPROVED: AUG 31 2011

BY THE COMMISSION:

Larry S. Landis, Commissioner  
Loraine L. Seyfried, Chief Administrative Law Judge

On February 10, 2011, Petitioner 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 (“Petitioner” or “Citizens”), filed with the Indiana Utility Regulatory Commission (“Commission”) its Petition in this Cause requesting the Commission approve a December 15, 2010 Reinstatement and Amendment of Gas Transportation Agreement (“Reinstatement and Amendment”) with Indianapolis Power & Light Company (“IPL”).

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 held on August 2, 2011, at 9:30 a.m. in Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Petitioner and the Indiana Office of Utility Consumer Counselor (“OUCC”) appeared and participated at the hearing. The testimony and exhibits of Petitioner and the OUCC, including a Settlement Agreement and Petitioner’s response to a July 28, 2011 Docket Entry, were admitted into the record without objection.

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

1. **Notice and Jurisdiction.** Notice of the public evidentiary hearing was given as required by law. Petitioner is a municipal 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 Petitioner and the subject matter of this proceeding.
2. **Petitioner’s Characteristics.** Citizens is engaged in the business of providing gas service to approximately 261,000 residential, commercial and industrial customers located in

and around Marion County, Indiana. Petitioner's principal office is located at 2020 Meridian Street, Indianapolis, Indiana.

**3. Petitioner's Case-in-Chief Testimony.** Mr. Jeffrey A. Willman, Petitioner's Director of Sales, provided an overview of the history concerning Petitioner's provision of gas transportation to IPL and the events that led to the Reinstatement and Amendment. Mr. Willman explained that the original Gas Transportation Agreement ("Agreement") between Citizens and IPL was approved by the Commission in Cause No. 41824 on October 30, 2002 and had an expiration date of June 17, 2010. He stated that the parties to the Agreement entered into discussions in March 2010; however, negotiations extended beyond the expiration date and concluded with the execution of the Reinstatement and Amendment on December 15, 2010. He further explained that following the expiration of the Agreement, gas service has been provided to IPL through Citizens' Gas Rate No. D5 – Large Volume Delivery Service tariff.

Mr. Willman testified that the primary purpose and need for an agreement concerning service to IPL has not changed over the years. He stated IPL, as an electric power generator, requires timely and reliable transportation of significant volumes of natural gas on relatively short notice. In addition, unique scheduling and interruption provisions are required to assure reliable gas transportation and general system integrity. He also noted that IPL's hourly demand requirements for gas transportation have increased in recent years, which requires effective management by both IPL and Citizens to avoid adverse system impacts.

Mr. Willman explained the Reinstatement and Amendment includes a few basic changes from the Agreement. Those changes include an extension of the original contract term for ten years for consistent planning and operation purposes, an update to rates and charges based on current market conditions, standardization of the balancing process and an adjustment to IPL's increased demand requirements.

Ms. LaTona S. Prentice, Petitioner's Executive Director of Regulatory Affairs, also testified in support of the Reinstatement and Amendment. Ms. Prentice testified that if Petitioner lost IPL as a customer, Petitioner would under-recover its Commission-authorized non-gas revenue requirement. She stated the rates and charges in the proposed Reinstatement and Amendment are sufficient to not only allow Petitioner to recover its incremental costs of providing gas service to IPL's facilities, but will also provide a contribution to the recovery of Petitioner's fixed costs.

Ms. Prentice explained that Citizens is a capital intensive business whose non-gas costs primarily are fixed and thus do not vary substantially with customer usage. Consequently, Ms. Prentice stated, if IPL were to stop purchasing gas from Petitioner, very little if any non-gas costs would be avoided. As a result, the loss of IPL as a customer would shift those fixed costs to remaining customers and increase their rates. Ms. Prentice opined the rates and charges established in the Reinstatement and Amendment are reasonable, just, and economically advantageous to Petitioner, IPL, and Petitioner's other customers.

**4. The Settlement Agreement.** The Settlement Agreement, a copy of which is attached to and made a part of this Order, provides that the parties agree the rates, charges, terms

and conditions of the Reinstatement and Amendment shall, upon approval by the Commission, be applied on a prospective basis from the date of such approval and final Order.

5. **Petitioner's Settlement Testimony.** Ms. Prentice affirmed that under the terms of the Settlement Agreement, Petitioner agreed the rates, charges, terms and conditions of the Reinstatement and Amendment will be effective prospectively and only upon approval and final Order by the Commission. A First Amendment to the Reinstatement and Amendment ("First Amendment") making clear the Reinstatement and Amendment would not be effective retroactively was attached to Ms. Prentice's settlement testimony.

6. **OUCC's Settlement Testimony.** Mr. Jon C. Dahlstrom, a Senior Utility Analyst in the Gas Division of the OUCC, testified on behalf of the OUCC in this proceeding. Mr. Dahlstrom testified that Petitioner's responses to the OUCC's data requests demonstrate the Reinstatement and Amendment will not create any inter-class subsidies and will allow Petitioner to recover its incremental costs. Mr. Dahlstrom stated the OUCC recommends approval of the Settlement Agreement as it eliminates the retroactive application of rates as proposed by Petitioner's original request.

7. **Commission Discussion and Findings.** Settlements presented to the Commission are not ordinary contracts between private parties. *U.S. Gypsum, Inc. v. Ind. 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.

Furthermore, any Commission decision, ruling, or order – including the approval of a settlement – must be supported by specific findings of fact and sufficient evidence. *U.S. Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coalition v. Pub. Serv. 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 ch. 8-1-2, and that such agreement serves the public interest.

The Commission previously has found that special contracts such as the Reinstatement and Amendment, as well as the rates, charges and terms and conditions for service they contain, are lawful if they are reasonable and just, as well as non-discriminatory. *See, e.g. Bd. of Dir. 's for Util. of the Dep't of Public Util. of the City of Indianapolis*, Cause No. 43448 at 6 (IURC July 9, 2008); *Bd. of Dir. 's for Util. of the Dep't of Public Util. of the City of Indianapolis*, Cause No. 43303 at 5 (IURC July 25, 2007). We also have recognized the importance of special contracts that help assure a utility's retention of a large customer and the preservation of that customer's contribution to the utility's fixed cost of recovery. *See, e.g., Ind. Gas Co., Inc.*, Cause No. 43298 at 25 (IURC Feb. 13, 2008).

Our review of the Reinstatement and Amendment (inclusive of the First Amendment), the Settlement Agreement and the testimony filed in this proceeding indicates that the rates to be charged under the Reinstatement and Amendment will allow Citizens to effectively provide IPL with timely and reliable transportation of significant volumes of natural gas while maintaining system integrity for all Citizens customers. The Reinstatement and Amendment also will allow Citizens to recover its incremental costs of providing service to those facilities and provide a contribution to the recovery of Citizens' fixed costs. In addition, the evidence shows that Citizens' provision of service under the Reinstatement and Amendment will not alter any of Citizens' existing rates or contracts and will not adversely affect the adequacy or reliability of service provided to Citizens' other customers. The Commission, therefore, finds the Reinstatement and Amendment, as amended, and the rates, charges, terms and conditions contained therein are reasonable and just, as well as non-discriminatory, and should be approved.

The parties agreed the Settlement Agreement may not be used as precedent in any other proceeding or for any purpose other than the resolution of the issues in this Cause, except to the extent necessary to implement or enforce the terms of that agreement. Consequently, we find that future citation to this Order should be construed in a manner consistent with our finding in the Commission's Order approving a settlement agreement in *Richmond Power & Light*, Cause No. 40434 (IURC March 19, 1997).

**8. Request for Confidentiality.** Petitioner requested that certain pricing and contract information to be submitted be determined confidential and exempt from public access requirements and offered the testimony of Mr. Willman in support of its request. On March 10, 2011, the Presiding Officers issued a Docket Entry granting confidential treatment of the information on a preliminary basis. Mr. Willman described the nature of the information, the reasons for maintaining the information confidential, and the efforts Petitioner has made to maintain the confidentiality of the information. Accordingly, pursuant to Ind. Code §§ 8-1-2-29 and 5-14-3-4(a)(4), we find the confidential information to be "trade secrets" and should be afforded confidential treatment and continue to be held as confidential by the Commission.

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

1. The Reinstatement and Amendment as amended by the First Amendment and the rates, charges, terms and conditions contained therein are reasonable and just, as well as non-discriminatory, and are hereby approved.

2. Citizens is hereby authorized and directed to implement the rates, charges, terms and conditions of the Reinstatement and Amendment, as amended by the First Amendment. The rates, charges, terms and conditions of the Reinstatement and Amendment will take effect on a prospective basis only on and after the date of this Order.

3. 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 §§ 5-14-3-4 and 8-1-2-29.

4. In accordance with Ind. Code § 8-1-2-70, within twenty (20) days from the date of this Order, Citizens 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:	\$1,373.76
OUCG charges:	<u>\$1,632.37</u>
TOTAL	\$3,006.13

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

**ATTERHOLT, LANDIS AND ZIEGNER CONCUR; BENNETT AND MAYS NOT PARTICIPATING:**

**APPROVED: AUG 31 2011**

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



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

OFFICIAL  
EXHIBITS

FILED  
July 11, 2011  
INDIANA UTILITY  
REGULATORY COMMISSION

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 )  
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OF A REINSTATEMENT AND AMENDMENT )  
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REQUIREMENTS )

CAUSE NO. 43993

IURC  
JOINT

EXHIBIT No. 1  
8-2-11 DATE AT REPORTER

SETTLEMENT AGREEMENT

This Settlement Agreement is made as of the 11<sup>th</sup> day of July, 2011, and entered into by and among the Board of Directors for Utilities of the Department of Public Utilities of the City of Indianapolis d/b/a Citizens Gas (“Petitioner” or “Citizens”) and the Indiana Office of Utility Consumer Counselor (the “OUCC”) (Citizens and the OUCC each a “Party” and collectively the “Parties”).

WHEREAS, on February 10, 2011, in Cause No. 43993, Citizens filed its Verified Petition requesting approvals from the Indiana Utility Regulatory Commission (“Commission”) relating to the approval of a Reinstatement and Amendment of Gas Transportation Agreement (the “Reinstatement and Amendment”) between Citizens and Indianapolis Power & Light Company (“IPL”), which was included as part of Petitioner’s prepared case-in-chief testimony and identified as Petitioners' Exhibit JAW-1;

WHEREAS, Citizens and the OUCC have engaged in communications and exchanged information relating to the relief requested by Petitioner in the Verified Petition and other matters; and

WHEREAS, as a result of such communications and negotiations, Citizens and the OUCC agree that the terms and conditions set forth in this Settlement Agreement represent a fair, just and reasonable resolution of the issues raised in this Cause;

NOW THEREFORE, subject to the Commission's approval of this Settlement Agreement in its entirety without modification or imposition of any other term or condition that may be unacceptable to either Party, Citizens and the OUCC agree as follows:

1. The OUCC supports approval of the Reinstatement and Amendment, so long as none of the rates, charges, terms or conditions in the Reinstatement and Amendment are applied retroactively and shall only become effective, on a prospective basis, upon the issuance of a Final Order by the Commission. Citizens agrees with these conditions. Citizens will cause the Reinstatement and Amendment to be amended as follows:

a. Citizens will cause the third WHEREAS clause of the Reinstatement and Amendment to be amended and replaced in its entirety with the following:

WHEREAS, the Parties desire to reinstate the Agreement, on a prospective basis, effective upon the approval of the Indiana Utility Regulatory Commission (the "Commission"), subject to the amendments set forth herein.

b. Citizens will cause Section 1 of the Reinstatement and Amendment to be amended and replaced in its entirety with the following:

Reinstatement. Except as specifically modified by this Reinstatement and Amendment, the Agreement and all of its terms and conditions are hereby reinstated effective, on a prospective basis and not to be applied retroactively, upon the date the Commission issues a final Order in Cause No. 43993 approving the Reinstatement and Amendment.

2. The Parties will offer supporting testimony for the approval of this Settlement Agreement in this proceeding and will request that the Commission issue a Final Order promptly accepting and approving the same in accordance with its terms. All evidence supporting the Settlement Agreement shall be reviewed and agreed upon by the Parties prior to submission to the Commission.

3. Neither the making of this Settlement Agreement nor any of its provisions shall constitute in any respect an admission by either Party in this or any other litigation or proceeding. Neither the making of this Settlement Agreement, nor the provisions thereof, nor the entry by the Commission of a Final Order approving this Settlement Agreement, shall establish any principles or legal precedent applicable to Commission proceedings other than those resolved herein.

4. This Settlement Agreement shall not constitute nor be cited as precedent by any person or deemed an admission by either Party in any other proceeding except as necessary to enforce its terms before the Commission, or any tribunal of competent jurisdiction. 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 Party may take with respect to any or all of the issues resolved herein in any future regulatory or other proceedings.

5. The undersigned have represented and agreed that they are fully authorized to execute this Settlement Agreement on behalf of their designated clients, and their successors and assigns, who will be bound thereby, subject to the agreement of the Parties on the provisions contained herein.

6. The communications and discussions during the negotiations and conferences attended only by the Parties have been conducted based on the explicit understanding that said communications and discussions are or relate to offers of settlement and therefore are privileged. All prior drafts of this Settlement Agreement and any settlement proposals and counterproposals also are or relate to offers of settlement and are privileged.

7. This Settlement Agreement is conditioned upon and subject to Commission acceptance and approval of its terms in their entirety, without any change or condition that is unacceptable to either Party.

[Signature page follows]

[Signature page to the July 2011 Settlement Agreement in Cause No. 43993]

The undersigned have represented and agreed that they are fully authorized to execute this Settlement Agreement on behalf of the designated parties who will be bound thereby.

The Board of Directors for Utilities of the  
Department of Public Utilities of the City, as  
trustee of a public charitable trust, d/b/a  
Citizens Gas

Indiana Office of Utility Consumer  
Counselor

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