CMS

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF WABASH VALLEY POWER ASSOCIATION, INC. PURSUANT TO IND. CODE 8-1-8.5 ET SEQ AND IND. CODE 8-1-2-76, 77, 78, 79, 80, 83 AND 84 FOR (1) ISSUANCE OF A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO ACQUIRE AND/OR CONSTRUCT UP TO 25 MWS OF LANDFILL GAS GENERATING FACILITIES AND (2) FOR AUTHORITY TO EXECUTE NOTES AS EVIDENCE OF INDEBTEDNESS UP TO $50,000,000 PAYABLE AT PERIODS OF MORE THAN TWELVE MONTHS FOR PURPOSES OF FUNDING THE CONSTRUCTION AND/OR PURCHASE OF LANDFILL GAS GENERATING FACILITIES AND RELATED EQUIPMENT	)	CAUSE NO. 44151 APPROVED: APR 18 2012

ORDER OF THE COMMISSION

Presiding Officers:
Carolene Mays, Commissioner
Angela Rapp Weber, Administrative Law Judge

On January 20, 2012, Wabash Valley Power Association, Inc. ("Petitioner" or "Wabash Valley") filed its Verified Petition ("Petition") in this Cause with the Indiana Utility Regulatory Commission ("Commission") requesting, pursuant to Indiana Code ch. 8-1-8.5, a Certificate of Public Convenience and Necessity ("CPCN") to acquire and/or construct up to 25 MWs of additional baseload landfill gas ("LFG") generating facilities. Wabash Valley also requested approval and authorization to issue instruments of long-term indebtedness in the principal amount of up to $50 million, payable at periods of more than twelve months, for purposes of funding the construction and/or purchase of LFG generating facilities and related equipment.

Pursuant to notice published as provided by law, the Commission conducted an evidentiary hearing in this Cause on March 20, 2012 at 1:30 p.m. in Room 224, 101 West Washington Street, Indianapolis, Indiana. Petitioner presented testimony and exhibits sponsored by M. Keith Thompson, Petitioner's Vice President, Power Production; Kari D. Wetter, Petitioner's Manager, Portfolio and Risk; and Nisha A. Harke, Petitioner's Manager of Finance and Rates. The Indiana Office of Utility Consumer Counselor ("OUCC") presented the testimony of Duane P. Jasheway, a Utility Analyst with the Electric Division. No members of the general public appeared at the evidentiary hearing or attempted to participate in this Cause.

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

1. **Notice and Commission Jurisdiction**. Due, legal, and timely notice of the evidentiary hearing in this Cause was given and published by the Commission as required by law.

Wabash Valley is a public utility within the meaning of the Public Service Commission Act, as amended, Ind. Code ch. 8-1-2, and is subject to the jurisdiction of the Commission to the extent provided by the laws of the State of Indiana. Wabash Valley seeks from the Commission a CPCN pursuant to Indiana Code § 8-1-8.5-2 and authority to issue instruments of indebtedness payable at periods of more than twelve months pursuant to Indiana Code §§ 8-1-2-78, -79, and -84(f). Accordingly, the Commission has jurisdiction over Petitioner in the subject matter of this proceeding.

2. **Petitioner's Characteristics.** Wabash Valley is a corporation organized and existing pursuant to the Indiana Nonprofit Corporations Act and, pursuant to Order of the Commission in Cause No. 35091, was granted a CPCN to operate as a public utility. Wabash Valley's principal place of business is located at 722 N. High School Road, Indianapolis, Indiana 46224. Wabash Valley serves as a power supplier to twenty-six electric cooperative members, and owns and operates generation, transmission, and related facilities.

3. **Relief Requested.** Wabash Valley requests the Commission to grant Wabash Valley a CPCN authorizing it to acquire and/or construct up to 25 MWs of LFG generating facilities. Wabash Valley also requests approval and authorization to issue instruments of long-term indebtedness up to $50 million and to encumber its property to finance the purchase of LFG generating facilities and related equipment.

4. **Wabash Valley's Evidence.** Mr. Thompson testified Petitioner is seeking a CPCN for to build or acquire 25 MWs of LFG generation projects. Wabash Valley has created its LFG program in conjunction with Waste Management of Indiana, LLC ("Waste Management"). Mr. Thompson served as the primary negotiator with Waste Management on LFG generation projects. He has overseen the construction of nine LFG generation plants and the acquisition of four LFG generation plants. Pursuant to a CPCN issued previously for 15 MWs of LFG generation facilities in Cause No. 43640, Wabash Valley has constructed 9.4 MWs of LFG generating facilities. Therefore, 5.6 MWs remain for the acquisition or construction of LFG projects from the CPCN granted in Cause No. 43640.

Mr. Thompson provided Exhibit MKT-A, which summarizes the anticipated capital costs for construction of a new 3.2 MW LFG generation plant. He said Wabash Valley estimates capital costs for eight new 3.2 MW LFG generation plants (totaling 25.6 MWs) to be $49.8 million, excluding interest accrued during construction or financing-related costs. Because Petitioner still has authorization pursuant to Cause No. 43640 to construct 5.6 MWs, it is only seeking 25 MWs in this Cause. Mr. Thompson testified the construction cost estimates are reasonable because Wabash Valley recently constructed three plants in the past three years. However, construction cost estimates will vary depending upon site-specific issues, such as: (1) earthwork requirements; (2) distribution interconnection costs; (3) material, equipment, and labor costs escalation; and (4) the potential need for gas clean-up systems.

Mr. Thompson identified the typical assets located at a LFG generation plant. He also testified that Waste Management currently operates and maintains all Wabash Valley LFG generating plants under a single operation and maintenance agreement. Waste Management currently holds all necessary environmental permits for all of Wabash Valley's thirteen LFG generating plants and will continue to maintain and hold necessary permits with applicable federal and state environmental agencies to properly operate LFG resources located at its landfills. Mr.

Thompson, however, testified that if Wabash Valley contracts with other landfill operators, Wabash Valley may have to obtain and hold necessary permits for these sites. He further stated Wabash Valley is comfortable with the Caterpillar engine generator technology; Wabash Valley's entire LFG generation is currently comprised of Caterpillar engine generators.

Mr. Thompson testified Wabash Valley is currently in negotiations with Waste Management to construct a third 3.2 MW LFG generating plant at the Liberty landfill in White County, Indiana. Based on discussions with other landfill operators, there are opportunities to construct multi-unit landfill gas plants at other landfills in the region. Mr. Thompson said there are several benefits from owning LFG generating facilities. Ownership of LFG facilities provides a source of low cost energy, builds member equity in smaller increments, diversifies the fuel mix of Wabash Valley's portfolio, creates local property tax basis for its members' areas, increases local distribution reliability, assists its members with local distribution infrastructure in some cases, sometimes bypasses transmission systems thus reducing delivery costs, stimulates the local economy during the construction period, is a source of green power for its members' Envirowatts program, and utilizes a waste fuel product that would otherwise be flared into the atmosphere.

Mr. Thompson testified Wabash Valley's Board of Directors has approved this request for procuring a CPCN for 25 MWs of additional LFG generation and directed Wabash Valley's staff to proceed with obtaining Commission approval.

Ms. Wetter testified Wabash Valley currently has an obligation to supply all-requirements power to twenty-six electric cooperative members, twenty-four of which Wabash Valley has contracted to serve their full electric power and energy requirements through the year 2050. In its 2011 Integrated Resource Plan ("IRP"), Wabash Valley projects that the electric demand and energy needs for its members will grow an average of 0.8% per year over the next twenty years. The expected load growth increases Wabash Valley's power requirements by approximately 20-25 MWs per year and approximately 100-130 GWhs per year. Wabash Valley also supplies power to several large industrial loads; however, the costs of power related to those loads are directly passed through to the customer under Wabash Valley's Federal Energy Regulatory Commission ("FERC") approved Industrial 2 Tariff. These large industrial loads are included in Wabash Valley's total planning load because Wabash Valley has the ultimate responsibility to meet these consumers' energy requirements and the minimum reliability requirements.

Ms. Wetter sponsored Exhibit KDW-1, which indentifies Wabash Valley's 2011 IRP forecasted demand supply requirements, Wabash Valley's firm energy requirements, and the amount of energy expected to be received from Wabash Valley's existing resources. Ms. Wetter testified that because of the high capacity factor available, LFG generation is important, not only to Wabash Valley's capacity needs but to energy needs as well. Exhibit KDW-1 shows Wabash Valley has an ongoing need for additional capacity. In 2013, Wabash Valley needs approximately 60 MWs capacity. The capacity need requirements increase to 180 MWs in 2018 due to the expiration of a 350 MW baseload purchase. As depicted in Exhibit KDW-2, Wabash Valley's energy needs are approximately 450 GWhs between 2013 and 2017, and that need increases to over 1600 GWhs in 2018. Ms. Wetter stated the proposed 25 MWs of LFG generating capacity and approximately 197 GWhs of annual energy from those facilities will help meet Wabash Valley's capacity and energy needs.

Ms. Wetter said Exhibit KDW-3 shows the cost of resources in Wabash Valley's 2011 IRP compared to the proposed LFG generating facilities. The levelized cost for the LFG generation at 90% capacity factor is estimated at $49.2/MWh. Ms. Wetter stated the LFG generation facilities have low variable operating and fuel costs, and the capital costs are lower than the baseload resource options. At capacity factors above 50%, the cost of LFG generation is lower than peaking or intermediate combined cycle resources. Ms. Wetter testified the LFG generation facilities also bring additional risk benefits because the contracted fuel price is more stable than natural gas, the emissions costs are lower, and the facilities are classified as a renewable resource. The LFG generators are located near the load and, therefore, contribute less to transmission losses. Further, the LFG generating facilities are modular in nature and can be constructed in stages and at multiple locations, thus reducing construction risks.

Ms. Wetter stated the construction of 25 MWs of additional LFG generation is consistent with Wabash Valley's latest IRP submitted to the Commission because in the IRP, Wabash Valley estimated it would need an additional 16 MWs of new landfill gas generators by 2018. She further testified that because of the operational and environmental benefits of this type of resource and the need for energy, as well as capacity, the installation of more facilities at appropriate landfill sites will be advantageous to Wabash Valley. The plan submitted with Wabash Valley's 2011 IRP was based on the assumption that Wabash Valley will be flexible in adding new resources, which will depend on the cost and timing of power resources available. The State Utility Forecasting Group's *Indiana Electric Projections: The 2011 Forecast* (issued in September 2011) also shows a need for additional resources in Indiana, and Wabash Valley's portfolio is consistent with that forecast.

Ms. Harke sponsored exhibits providing the LFG project cost estimates, estimated debt service payment, and pro-forma consolidation income statements and balance sheets workpapers. She said Petitioner proposes to finance up to 100% of the estimated capital costs related to the LFG generating projects through competitive lenders, such as CoBank, private placement funding, or clean renewable energy bonds ("CREBs"). Petitioner is seeking approval to finance up to $50 million for the LFG projects and intends to sign one or more promissory notes to finance them for approximately twenty years. The fixed market interest rate for a twenty-year loan is approximately 5.65% as of November 28, 2011. She stated that in addition to obtaining a competitive interest rate with CoBank, Wabash Valley would receive patronage capital and other rate discounts that may be available so the effective interest rate will be less than the stated interest rate on the promissory notes. In Ms. Harke's opinion, the 5.65% is a reasonable interest rate.

Ms. Harke testified Wabash Valley has been able to secure 0% interest financing on new LFG generating projects through CREBs initially offered in the Energy Policy Act of 2005. Wabash Valley has financed three landfill projects with this type of financing and will continue to apply for this type of financing. Ms. Harke further stated there may be other financing alternatives available through the Federal Stimulus bill that would provide grants for renewable energy projects, along with State allocated grants for energy projects. Petitioner will make every effort to obtain those no- or low-cost funds.

Ms. Harke said according to the estimated calculation of interest expense and principal payments, the annual debt service payment for all the notes would be approximately $4.2 million based on an interest rate for twenty years of approximately 5.65%. Ms. Harke testified Wabash Valley has sufficient revenue to repay the debt. As of July 1, 2004, Wabash Valley became regulated by FERC. Under its FERC approved tariff, Wabash Valley can collect all costs to maintain the approved margin level. Further, she testified Petitioner's indenture trust requires a tier of 1.0 or better and a debt service coverage ratio of 1.15 or better. These targets will be met according to the financial statements depicted in Exhibit NAH-4. Any capital projects financed using long-term debt need to meet the requirements of the trust indenture and all supplements, and notes issued will require the authorization from the trustee under the indenture of trust. Ms. Harke testified the Wabash Valley Board of Directors approved $50 million of financing for the 25 MWs of LFG generation.

5. **OUCC's Evidence.** Mr. Jasheway testified that the LFG generation is in the public interest because it provides baseload generating capacity and system reliability efficiently and economically. It also provides Petitioner's members with a renewable energy source consistent with meeting potential future renewable energy portfolio standards. Mr. Jasheway further stated there are quantifiable benefits to the LFG generation. For example, as of April 2009, the Twin Bridges I LFG generating facility has recovered 8.6 trillion standard cubic feet of methane gas, produced 405,000,000 kilowatt hours of electricity, and the BTUs consumed by this production is equal to 25,000,000 barrels of oil.

Mr. Jasheway stated the OUCC believes Petitioner has addressed each of the factors required for a CPCN under Indiana Code § 8-1-8.5-4. Also, based on past performance, he believes Petitioner has demonstrated it will continue to meet the statutory requirements for the granting of a CPCN. Accordingly, Mr. Jasheway recommended that the Commission grant Petitioner's CPCN with approval to acquire and/or construct 25 MWs of additional LFG gas generation.

6. **Commission Discussion and Findings.**

A. **CPCN.** Indiana Code ch. 8-1-8.5 governs the Commission's review of CPCN requests. Specifically, Indiana Code § 8-1-8.5-4 provides:

> In acting upon any petition for the construction, purchase, or lease of any facility for the generation of electricity, the Commission shall take into account:
>
> (1) the applicant's current and potential arrangement with other electric utilities for:
> (A) the interchange of power;
> (B) the pooling of facilities;
> (C) the purchase of power; and
> (D) joint ownership of facilities; and
> (2) other methods for providing reliable, efficient, and economical electric service, including the refurbishment of existing facilities, conservation, load management, cogeneration and renewable energy sources.

Based on the evidence presented, the Commission finds Wabash Valley has made reasonable efforts in its current and potential arrangements with other electric utilities for the interchange of power, pooling of facilities, purchase of power, and joint ownership of facilities. Wabash Valley has also implemented other methods for providing reliable, efficient, and economic electric service, including the construction of new facilities, conservation, load management, cogeneration, and procurement of renewable energy sources. Wabash Valley has also considered options available to meet increasing demand for electricity and the need for reliable energy and capacity. The evidence also indicates that the purchase and/or construction of an additional 25 MWs of LFG generation is a reliable, efficient, and economic way to meet Wabash Valley's needs.

Further, Indiana Code § 8-1-8.5-5 sets forth specific findings the Commission must make in order to approve and grant the requested CPCN. First, the Commission must make a finding, based on the evidence of the record, as to the best estimate of construction costs. Second, the Commission must find that either (a) purchase, lease, or construction will be consistent with the Commission's plan, if any, for the expansion of electric generation facilities, or (b) the proposed purchase, lease, or construction is consistent with a utility-specific proposal regarding the future needs of consumers in the State of Indiana or in the petitioning public utility's service area. Third, the Commission must find that public convenience and necessity require the facilities for which the CPCN is requested.

1. **Cost Estimate.** We have previously stated that "the initial granting of a CPCN depends in large part upon the economic efficacy of a proposed project, and as such, the initial cost estimates are a significant factor in the Commission's decision making process." *Indianapolis Power & Light,* Cause No. 42170 ECR 16 S1, at 7 (IURC July 7, 2011). "It is the Petitioner's obligation to prepare a well-founded and realistically accurate cost estimate to support its CPCN request." *Indiana Michigan Power Co.*, Cause No. 44033, Order on Less Than All the Issues, at 6 (IURC Feb. 22, 2012).

Wabash Valley estimates that the total cost to purchase the LFG facilities and related equipment to be $50 million. Mr. Thompson states construction cost estimates will vary depending upon issues related to the construction site. Nevertheless, he notes Petitioner has constructed LFG plants in the past three years. Therefore, the $50 million cost estimate is reasonable. According to Ms. Wetter, the levelized cost for the LFG generation at 90% capacity factor is estimated at $49.2/MWh. Also, the costs of operation, including fuel costs, are low, while the capital costs are lower than the baseload resource options. Ms. Wetter also states that at capacity factors above 50%, the cost of LFG generation is lower than peaking or intermediate combined cycle resources. The evidence indicates that the cost estimate to purchase or construct LFG facilities is $50 million, and the Commission finds, based on the evidence presented, this estimate to be reasonable.

The Commission notes that the $50 million cost estimate is just that—an estimate. This cost estimate is for generally identified projects. Due to this lack of project-specific estimates, WVPA shall provide project-specific estimates no less than thirty days prior to construction in reports to be filed with the Commission, as discussed below. These reporting requirements are generally consistent with our Order in Cause No. 43640, which approved Wabash Valley's prior CPCN request to construct up to 15 MWs of LFG generation facilities. *Wabash Valley Power Ass'n*, Cause No. 43640, at 8–9 (IURC June 10, 2009).

2. **Consistency of LFG Facilities with Wabash Valley's IRP.** The Commission finds from the evidence of record that Wabash Valley's proposed purchase, construction, and ownership of up to 25 MW of LFG facilities is consistent with its IRP submitted pursuant to Indiana Code §8-1-8.5-3(e) as modified in part in this Cause by Wabash Valley's testimony and exhibits.

3. **Public Convenience and Necessity.** Ms. Wetter testifies concerning the additional benefits gained as a result of the acquisition of LFG. The contracted fuel price for LFG provides greater stability than natural gas, the emissions costs are lower, and the LFG facilities

are considered a renewable resource. Also, transmission losses and construction risks are reduced. In Mr. Jasheway's opinion, the LFG generation is in the public interest because it provides baseload generating capacity and system reliability efficiently and economically. It also provides a renewable energy that may aid in Petitioner's members' ability to meet potential future renewable energy portfolio standards. He recommends approval of Petitioner's request for a CPCN. The Commission finds the public convenience and necessity requires, or will require, Wabash Valley's construction and/or acquisition of 25 MWs of LFG generation.

4. Conclusion. The Commission finds that based on the evidence presented, a CPCN should be granted to Wabash Valley for the acquisition and/or construction of an additional 25 MWs of LFG generation pursuant to Indiana Code § 8-1-8.5-4 and Indiana Code § 8-1-8.5-5. Wabash Valley stated in its Petition that it would file reports with the Commission twice a year in January and July regarding ongoing LFG projects. We find this is appropriate. Semi-annual reports shall be filed, under this Cause, by January 1 and July 1, and such reports shall contain a summary of the ongoing LFG construction projects, including nameplate capacity, estimated project timeline with major milestones noted, the estimated date of first operations, and when each generator within a new site is fully operational.

B. Reporting Requirements. Wabash Valley shall file under this Cause reports for each facility. The initial report shall be filed thirty days prior to the construction or acquisition of each LFG generation facility and shall contain the following information, if it is available:

a) Project ownership and name of each facility;
b) Name, title, address, and phone number for the primary contact person for each facility;

c) Engineering and construction timelines and critical milestones for each facility;

d) Manufacturer, model number, and operational characteristics of the engines installed in each facility;

e) Anticipated total annual megawatt hour output for each facility;

f) The connecting utility for each facility;

g) The expected in-service (commercial operation) date for each facility; and

h) The projected total cost to construct each facility.

As each project progresses, subsequent reports shall update the initial report detailing any material changes to the projects, including the projected cost of each facility, and a final report shall be filed within thirty days of project completion. The final report shall contain the following information for each facility:

a) The actual total cost of construction;

b) The total megawatt output for the facility; and

c) The actual in-service (commercial operation) date for the facility.

Wabash Valley shall also file annually by January 31 of each year a report containing the following information:

a) The LFG quantity consumed and Btu content for the prior year for each LFG facility; and

b) Any changes made to the information provided in the initial, subsequent, and final reports.

C. **Financing Authority.** Indiana Code § 8-1-2-79 requires Commission approval of Petitioner's issuance of evidence of indebtedness payable more than one year from its issuance. Additionally, Indiana Code § 8-1-2-84 requires Commission approval for the encumbrance of a public utility's property. Wabash Valley's Petition and evidence describe the nature and purpose of the long-term indebtedness for which it requests approval (i.e., the issuance of long-term debt not to exceed $50 million for the acquisition and/or construction of 25 MWs of additional LFG generation). Wabash Valley's evidence demonstrates it will have sufficient revenue to timely pay the debt without adversely affecting its credit ratings or violating its financing obligation to lenders. Based on the evidence of record, the Commission finds Wabash Valley's request for financing is in the public interest and reasonable, and is therefore approved.

Ms. Harke testifies Wabash Valley has been able to secure 0% interest financing through the use of CREBs for LFG projects. She also indicates other financing alternatives may be available through the Federal Stimulus, in addition to State allocated grants. The Commission encourages Petitioner to make every effort to obtain these no-cost or low-cost funds.

D. **Confidential Material.** On January 24, 2012, Petitioner filed an *Application for the Commission to Find Certain Information Filed in this Cause as Confidential* ("Application"). Attached to the Application were the Affidavits of M. Keith Thompson and Nisha A. Harke. On February 8, 2012, the Presiding Officers, issued a Docket Entry finding that the information ("Confidential Information") should be held as confidential by the Commission on a preliminary basis.

Upon review of the Confidential Information, the Commission concludes that the information for which Petitioner sought confidential treatment contains confidential, proprietary, and competitively sensitive trade secret information that has economic value to Petitioner. It should be protected from being known to, or ascertainable by, its competitors and other persons who could obtain economic value from the knowledge and the use of such information. In addition, the Commission finds that the public disclosure of the Confidential Information would have a substantial detrimental affect on Petitioner, and the information is subject to Petitioner's efforts to maintain its secrecy that are reasonable under the circumstances. Accordingly, the Confidential Information submitted to the Commission pursuant to the Application and the February 8, 2012 Docket Entry is exempt from the public access requirements of Indiana Code § 5-14-3-3, Indiana Code § 8-1-2-29, and Indiana Code § 24-2-3-1 and shall continue to be held as confidential by the Commission.

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

1. Wabash Valley is issued a CPCN to acquire and/or construct up to 25 MWs of additional LFG generation.

2. Wabash Valley shall file under this Cause the reports described in Paragraph 6B.

3. Wabash Valley is authorized to issue long-term debt and execute notes as evidence of indebtedness up to $50 million and to encumber its property to secure payment of the indebtedness.

5. The Confidential Information filed under seal by Wabash Valley in this Cause shall continue to be treated by the Commission as confidential and not subject to public disclosure.

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

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

APPROVED: APR 18 2012

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