ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF SYCAMORE GAS COMPANY, INC. FOR APPROVAL OF A GAS SERVICE CONTRACT WITH MGPI OF INDIANA, LLC AND TO ESTABLISH CONFIDENTIAL PROCEDURES	)))))	**CAUSE NO. 44193** **APPROVED:** AUG 22 2012

ORDER OF THE COMMISSION

Presiding Officers:
Carolene Mays, Commissioner
Loraine L. Seyfried, Chief Administrative Law Judge

On April 19, 2012, Sycamore Gas Company, Inc. ("Sycamore" or "Petitioner") filed its Verified Petition ("Petition") with the Indiana Utility Regulatory Commission ("Commission") seeking approval of a gas service agreement ("Contract") with MGPI of Indiana, LLC ("MGPI"). The Petition also requested that certain provisions of the Contract be found confidential and excepted from disclosure by the Indiana Public Records Act.

On May 17, 2012, Sycamore filed its case-in-chief, consisting of the direct testimony and exhibits of its Chief Financial Officer, Alex Pardo. On June 14, 2012, the Indiana Office of Utility Consumer Counselor ("OUCC") filed a Notice of Settlement.[1] On June 28, 2012, the OUCC filed the testimony of Jon Dahlstrom, Senior Utility Analyst in the Natural Gas Division.

Pursuant to notice duly published as required by law, proof of which was incorporated into the record by reference and placed in the official files of the Commission, an evidentiary hearing was held on July 5, 2012 at 10:00 a.m. in Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Both Sycamore and the OUCC appeared and participated by counsel. The testimony and exhibits of Sycamore and the OUCC were admitted into the record. No members of the general public appeared.

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

1. <u>**Commission Notice and Jurisdiction**</u>. Due, legal and timely notice of the hearing in this Cause was given and published by the Commission. Sycamore operates a public gas utility, and as such, is subject to the jurisdiction of the Commission as provided in the Public Service Commission Act, as amended. Sycamore seeks approval of a contract for firm gas transportation service to MGPI pursuant to Ind. Code §§ 8-1-2-24 and -25. Therefore, the Commission has jurisdiction over Petitioner and the subject of its petition for relief.

[1] Although the OUCC filed a Notice of Settlement, no settlement agreement was filed by the parties.

2. **<u>Petitioner's Characteristics</u>.** Petitioner is a corporation duly organized and existing under the laws of the State of Indiana and has its principal office at 1155 East Eads Parkway, Greendale, Indiana. Petitioner is engaged in rendering natural gas utility service to the public in southeastern Indiana. It owns, operates, manages and controls plant and equipment used for the production, storage, transmission, distribution and furnishing of gas service.

3. **<u>Summary of the Evidence</u>.**

A. **Petitioner's Direct Evidence.** Mr. Alex W. Pardo, Chief Financial Officer for Petitioner, testified in support of Sycamore's request for approval of its Contract with MGPI. He explained that one of the largest manufacturing facilities within Sycamore's service territory has been a distillery located in Lawrenceburg. In the past, gas used at the distillery has been purchased through Sycamore's interruptible transportation service tariff. Recently, however, MGPI acquired the distillery assets and contacted Petitioner about a special contract for firm transportation service.

Mr. Pardo indicated that he was aware of another facility owned by an affiliate of MGPI that bypassed the local distribution company serving the area in favor of a direct connection to a nearby interstate gas pipeline. Consequently, Sycamore entered into negotiations with MGPI, which resulted in the Contract.

Mr. Pardo stated the Contract is for a fixed term of ten years and may be extended for additional years if neither party notifies the other of its intention to terminate the agreement. In addition to establishing specific rate terms for firm gas transportation, the Contract sets forth MGPI's commitment to increase its annual gas consumption through the conversion of certain manufacturing equipment from coal-burning to natural gas and its agreement not to bypass Sycamore's system. The contract also contains minimum purchase requirements at levels twenty times greater than historical consumption amounts. Mr. Pardo stated that absent the Contract, MGPI posed a credible threat to bypass Sycamore in favor of a direct connection to a nearby interstate pipeline. Consequently, he stated, the Contract represents the preservation of load on its system and an expansion of its throughput amounts.

Mr. Pardo testified Sycamore's variable costs to provide transportation are such that the revenues received from MGPI under the Contract will not only cover the incremental cost to provide service to MGPI, but will also contribute to Sycamore's fixed costs. In addition, because the Contract calls for greater volumes of gas than has historically been consumed at the facility, Petitioner anticipates realizing an increase in revenue, which indirectly should benefit all of its customers. While Mr. Pardo indicated that Petitioner's facilities and system capacity are adequate to provide the increased gas volumes to MGPI, he said it was necessary to increase the delivery capacity of two of its Texas Gas connection points and upgrade a regulator station.

Mr. Pardo concluded that MGPI represents a particularly unique customer for a utility of Sycamore's relatively small size and the Contract provides a solution to meet MGPI's business needs while allowing Sycamore to satisfy its obligations to all of its customers.

B. OUCC's Direct Evidence. Mr. Jon C. Dahlstrom, Senior Utility Analyst for the Natural Gas Division, testified the OUCC investigated the following concerns: (1) MGPI's ability to bypass Sycamore's system; (2) the additional investment required by Sycamore to provide additional service to MGPI; and (3) whether revenues from MGPI under the Contract would cover all variable costs, Sycamore's incremental investment and contribute to Sycamore's fixed costs.

With regard to MGPI's ability to bypass Sycamore's system, Mr. Dahlstrom testified that Sycamore's discovery responses described MGPI's close proximity to an interstate gas pipeline, its ability to manage its own gas supply and its ability to recover any building costs within as little as six years. Mr. Dahlstrom noted that although additional investment will be required by Sycamore to provide service under the Contract, the anticipated revenues will recover the additional investment costs within three months, as well as cover all variable costs and contribute more to Sycamore's fixed costs than current contributions. He stated that by converting its equipment to natural gas, MGPI's additional load, even under the lower proposed rates, will provide over five times the current revenues.

Mr. Dahlstrom concluded by recommending approval of the proposed Contract. He explained that he believes Sycamore's request to be reasonable and in the public interest because the Contract provides for Sycamore's retention of a large customer on its system for at least ten years with a minimum monthly payment. In addition, the revenue increase will indirectly benefit all customers through increased contributions to current fixed costs.

4. <u>Commission Discussion and Findings</u>. While customized, off-tariff arrangements between a utility and one of its business customers are not routine, neither are they uncommon. Ind. Code § 8-1-2-24 authorizes such arrangements that may be "practicable and advantageous" to the parties when found by the Commission to be "reasonable and just and not inconsistent with the purpose of [Ind. Code ch. 8-1-2]." In addition, Ind. Code § 8-1-2-25 provides that,

> [t]he 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.

When reviewing a contract between a public utility and one of its customers, the Commission has considered a variety of factors in making its determination. Such factors have included: (1) whether the negotiated rates will be sufficient for the utility to cover the incremental cost of providing service to the customer and also provide a contribution to the recovery of fixed costs; (2) whether the utility has sufficient capacity to meet the customer's needs; and (3) the need of the utility to retain a large customer and preserve that customer's contribution to the utility's fixed cost recovery. *See Westfield Gas Corp. d/b/a Citizens Gas*, Cause No. 43592 at 4 (IURC March 11, 2009).

In the instant case, Sycamore has agreed to provide firm transportation gas service to MGPI at a rate and on terms generally more favorable than would be available to MGPI under applicable Sycamore tariffs. In exchange, MGPI has agreed to make various investments to convert certain of its coal-burning equipment to natural gas, which is expected to result in a substantial increase in the amount of gas consumed at the facility. As noted by Mr. Pardo, the Contract also contains minimum gas purchase quantities several times greater than the amounts historically consumed at the facility. In addition, MGPI committed to not bypassing, directly or indirectly, Sycamore's system during the ten-year term of the Contract.

The evidence presented demonstrates that the rates specified in the Contract are sufficient to cover Sycamore's incremental costs and will also contribute to recovery of Sycamore's fixed costs. In addition, because Sycamore's variable costs to provide transportation service are minimal, the greater gas volumes called for in the Contract are expected to increase Sycamore's revenues, providing an indirect benefit to all of Sycamore's customers. Both the utility and its other customers are further benefitted by Sycamore's retention of this large customer and the preservation of load on its system.

However, with respect to the term of the Contract, we have previously noted that "[c]ontracts that continue in perpetuity with no periodic Commission oversight may result in terms that are no longer in the public interest even if the parties to the contract do not object to ongoing terms." *Ind. Gas Co., Inc.*, Cause No. 43735 at 5 (IURC Nov. 12, 2009). Consequently, we find that the total term of the Contract shall not extend beyond the initial ten years. In the event Sycamore and MGPI choose to extend the Contract, Sycamore shall file a petition seeking Commission approval for any extension at least six (6) months prior to the end of the ten-year Contract term. Provided Sycamore timely files such a request for an extension, the Contract may continue until the Commission issues a ruling on the request.

Accordingly, the Commission finds the Contract, with the exception of the term relating to its renewal, is reasonable and just, consistent with the purposes of Ind. Code ch. 8-1-2 and should be approved.

5. Confidentiality. On April 19, 2012, Sycamore filed a Motion seeking confidential treatment for certain provisions of the Contract related to pricing and nomination and balancing. Attached to the Motion was the affidavit of Mr. Pardo, which set forth facts establishing such information has actual or potential economic value for Petitioner, disclosure could provide others with an unfair advantage in contract negotiations, and Petitioner takes all reasonable steps to protect the confidential information. Accordingly, pursuant to Ind. Code §§ 8-1-2-29 and 5-14-3-4, we find the pricing and nomination and balancing provisions of the Contract to constitute trade secret information and should be afforded confidential treatment.

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

1. The Contract dated March 15, 2012 between Sycamore Gas Company and MGPI of Indiana, LLC shall be and hereby is approved for a ten-year term as set forth in Finding No. 4 above.

2. The pricing and nomination and balancing provisions of the Contract are found to be confidential trade secrets, exempted from public access.

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

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

APPROVED: AUG 22 2012

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

Brenda A. Howe

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Secretary to the Commission