

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)	CAUSE NO. 44463
OF A SPECIAL CONTRACT FOR ELECTRIC)	
SERVICE WITH BERRY PLASTICS)	APPROVED: OCT 01 2014
CORPORATION AND ESTABLISHMENT OF)	
CONFIDENTIAL PROCEDURES)	

ORDER OF THE COMMISSION

Presiding Officers:
Carol A. Stephan, Commission Chair
Gregory R. Ellis, Administrative Law Judge

On March 14, 2014, Southern Indiana Gas and Electric Company, Inc. d/b/a Vectren Energy Delivery of Indiana, Inc. (“Vectren South” or “Petitioner”) filed its Verified Petition (“Petition”) seeking approval from the Indiana Utility Regulatory Commission (“Commission”) of Addendum No. 1 to the Electric Service Contract (“Addendum” or “Berry Addendum”) which amends a Special Contract for Electric Service (“2009 Contract”) between Vectren South and Berry Plastics Corporation (“Berry”) which was approved by the Commission in Cause No. 43831 on March 3, 2010. Petitioner also requested a determination that designated confidential information (“Confidential Information”) involved in this proceeding be exempt from public disclosure under Ind. Code § 8-1-2-29 and Ind. Code ch. 5-14-3.

Petitioner also prefiled the direct testimony and exhibits of Thomas L. Bailey, Director of Sales, in support of its Petition on March 14, 2014. In addition to the testimony of Mr. Bailey, the affidavit of Rodgers Greenwalt, Berry’s Executive Vice President of Operations, was submitted attesting to the confidential, proprietary, competitively sensitive, and trade secret nature of the Confidential Information. Filed with the Petition were Vectren South’s prepared testimony and a public version of its exhibits with the Confidential Information redacted. The Commission’s April 17, 2014 docket entry granted Vectren South’s request for protection of Confidential Information, finding the information to be confidential on a preliminary basis and adopting certain procedural safeguards pending a final determination of confidentiality.

Vectren South filed its Confidential Information under seal on May 15, 2014. On June 20, 2014, the Indiana Office of Utility Consumer Counselor (“OUCC”) filed a public redacted version of the testimony of Eric M. Hand, Utility Analyst. The OUCC also filed an unredacted version of Mr. Hand’s testimony with the Commission on June 20, 2014. On July 11, 2014, Vectren South filed the rebuttal testimony of Mr. Bailey.

The Commission held a public hearing on July 29, 2014 in Room 224 at the PNC Center, 101 West Washington Street, Indianapolis, Indiana. The Petitioner and the OUCC were present

and participated. The testimony and exhibits of Petitioner and the OUCC were admitted into the record without objection. No members of the general public appeared or sought to testify at the hearing.

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

1. Notice and Jurisdiction. Due, legal and timely notice of the hearing in this Cause was given as required by law. Vectren South is a public utility within the meaning of Ind. Code § 8-1-2-1(a). Under Ind. Code §§ 8-1-2-24 and 25, the Commission has jurisdiction over Petitioner's rates and charges related to changes to customer-specific contracts. Therefore, the Commission has jurisdiction over Petitioner and the subject matter of this Cause.

2. Petitioner's Characteristics. Petitioner is a corporation organized and existing under the laws of the State of Indiana. Its principal office is located at One Vectren Square in Evansville, Indiana. Petitioner is engaged in rendering electric utility service to the public and owns and operates electric generating plant and distribution system for the production, transmission, delivery and furnishing of this service to approximately 145,000 customers in southwestern Indiana.

3. Relief Requested. Petitioner requests Commission approval of the Addendum for certain electric services between Vectren South and Berry. Petitioner also seeks a determination that the Confidential Information involved in this proceeding be exempt from public disclosure under Ind. Code § 8-1-2-29 and Ind. Code ch. 5-14-3.

4. Vectren South's Case-in-Chief. In support of its request, Petitioner submitted the direct testimony of Thomas L. Bailey, Director of Sales for Vectren Utility Holdings, Inc. Mr. Bailey testified that the Addendum resulted from Vectren South's economic development efforts in attraction and retention of Berry's product lines. He testified that Berry operates four manufacturing facilities located in southwestern Indiana ("Berry Facilities") which are served by Vectren South. He stated the Berry Facilities are important to both Vectren South and development efforts in southwest Indiana. The Berry Facilities currently employ over 2,500 people in southwestern Indiana, are long-time Vectren South customers and in aggregation is one of Petitioner's largest electric consumers. Mr. Bailey testified that Berry is under competitive pressures and was considering all geographic options for expansion, including existing facilities in the United States and new ones outside of Vectren South's service territory. Berry was up-front with Petitioner regarding their strategic business plan, including capital investment, job creation, and energy requirements. Mr. Bailey explained that because of the significant economic benefits to Vectren South and its territory from the Berry retention, Vectren South engaged in good faith, arm's length negotiations to assure Berry's presence as a long term electric customer. These negotiations were successful and culminated in the execution of the Addendum to serve the electric requirements of expansions to Berry Facilities in southwestern Indiana. The Addendum amended the 2009 Contract between Berry and Vectren South that was previously approved by the Commission on May 3, 2010 in Cause No. 43831 and was set to expire in 2018.

Mr. Bailey explained that most of Vectren South's costs of providing electric utility

service are fixed and those costs will not be materially reduced if Berry ceases or reduces production at their facilities. He indicated the loss of Berry as a customer would result in remaining customers bearing a greater burden of the electric utility service's fixed costs formerly recovered from Berry. He also stated that if Berry maintains or expands production at the Berry Facilities through rates under which Vectren South recovers more than the incremental cost of continuing to serve Berry, other customers will be better off as a result of Berry's contributions to Vectren South's fixed cost recovery. Mr. Bailey also testified about other benefits from the Addendum, including the capital investment in the community and the creation of approximately 250 new jobs in southwestern Indiana. The terms of the Addendum encourage future expansion opportunities while providing a competitive rate structure promoting profitability and growth. He noted that the Addendum provides for a ten year term.

Mr. Bailey described the provisions of the Addendum. He indicated the Berry Facilities will be served under Rate LP, Large Power Service tariff, except to the extent expressly modified by the Addendum. While the 2009 Contract applied to one Berry facility, the Addendum applies to all four Berry Facilities and modifies the term for an extended ten year term. Mr. Bailey also stated that the Addendum modifies the 2009 Contract to allow a third tier discount to Berry's Rate LP for certain levels of Billing Demand at the Berry Facilities. He also testified that Berry agreed to an increase in its existing full-time employee count in calendar year 2014 in the southwestern region and retention of certain current full-time employee base through 2024. If these requirements are not met and maintained by Berry, the Addendum shall terminate and the 2009 Contract shall continue to remain in effect for the remainder of the term of the 2009 Contract.

Mr. Bailey explained that the Addendum will not adversely impact the adequacy or reliability of service provided to other customers. He indicated the rates contained in the Addendum are practical and advantageous to Berry and Vectren South, in the public interest, and not inconsistent with the purpose of Indiana utility regulation. Mr. Bailey testified that the Addendum is reasonable and just. It continues a relationship between Vectren South and Berry which provides benefits to both entities, as well as Vectren South's customers and the southwestern Indiana economy. The Berry Addendum represents a result that is the best deal both sides felt could be obtained.

Mr. Bailey also testified that the Confidential Information contains pricing, demand, term and other provisions that were negotiated between Berry and Vectren South on a confidential basis. He indicated that Vectren South is likely to negotiate business retention contracts with other customers in the future. If these terms become generally known or readily available, parties in negotiation with Vectren South could use this knowledge against Vectren South. Knowledge of these terms by other customers would establish certain benchmarks and a price ceiling in future negotiations, thereby limiting the potential revenues and benefits that could accrue to Vectren South and its customers. In other words, other customers would insist on the same or better terms as those negotiated with Berry. Additionally, disclosure of Berry's confidential cost, usage, operational and business planning information could be of value to its competitors and harmful to Berry. In sum, Vectren South and Berry 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 Berry Agreement. Vectren South has also entered into an agreement with Berry that protects the confidentiality of the Berry information. Accordingly, Vectren South requested the Commission find the Confidential Information to be excluded from public disclosure.

5. OUCC's Case-in-Chief. Eric M. Hand, Utility Analyst in the OUCC's Electric Division, testified that he reviewed the unredacted version of Mr. Bailey's testimony and exhibits, the unredacted Addendum and confidential Vectren South discovery responses. In his confidential redacted testimony, he described the Addendum and his review of its benefits. Mr. Hand expressed concern about Berry's increased opportunity for discounts which he stated could result in less total utility revenue each year of the Addendum term as compared to the current Contract. He also opined that the contribution to fixed costs would be less, but he could not determine based on Petitioner's filings and discovery responses whether Berry would still provide a contribution to Vectren South's total fixed costs. He testified that there were no guarantees about employee headcount throughout the term of the contract and that instead the Addendum was more of a retention rate instead of a short-term economic development rate designed to lure a new business to the service territory.

Mr. Hand recommended that Vectren South demonstrate how the Addendum results in recovery of its variable costs and expected contribution to fixed costs. He noted that Vectren South has the right, under Ind. Code § 8-1-2-24(a) to establish reasonable special contracts with its customers and opined that those contracts should not unduly burden other ratepayers with expenses that may be avoided by the contract recipient. He concluded the Addendum is acceptable to the OUCC because any additional costs will be borne by Vectren South's shareholders until its next base rate case. Mr. Hand indicated the OUCC would address any issues regarding cost allocation at that time. He stated that the OUCC recognizes Vectren South is seeking to retain an important industrial customer while assuring that the southern Indiana economy has employment, both of which are laudable goals and in the best interests of Vectren South's shareholders and ratepayers.

6. Vectren South's Rebuttal. Mr. Bailey provided rebuttal testimony on behalf of Petitioner to address concerns from the OUCC. He indicated that the Addendum will not result in Vectren South earning lower revenue each year as compared to the terms of the 2009 Contract. The Addendum is the inducement for Berry to expand operations with millions of dollars in capital investment and the creation of new jobs in southwestern Indiana, thereby increasing usage and resulting in greater revenues for Vectren South because of increased energy consumption. Mr. Bailey stated that Vectren South's fixed costs would remain the same, but the revenues it earns as a result of Berry's new usage will increase. He also stated the Addendum does not impact the existing energy rates and instead impacts only the demand rates.

Mr. Bailey explained that in response to OUCC concerns, Vectren South provided Berry's kilovolt ampere volume levels by month for historical and projected periods under the Addendum. These levels were presented by premise/site and split between fixed and variable contributions based on Vectren South's current tariff delineations. Vectren South also provided data demonstrating how Berry's volumes on a monthly and annual basis provide for fixed and variable cost recovery under existing Rate LP tariff rates, under the existing Berry contract, and then under the proposed Addendum. He stated the OUCC subsequently concluded the information provided is consistent with what the OUCC needed to determine whether or not a special contract is in the public interest.

Finally, Mr. Bailey testified that the Addendum requires that Berry increase its existing full-time employee count by 250 persons in calendar year 2014 and retain 90% of the full-time employee base through 2024. Therefore, Mr. Bailey stated the Addendum is both a short-term economic development rate and also a retention rate in the long term. He indicated that with Berry maintaining or expanding production at its facilities through rates under which Vectren South continues to recover more than the incremental cost of continuing to serve Berry, Vectren South's shareholders should bear no additional costs to serve Berry under the Addendum.

7. **Discussion.** Petitioner seeks approval of the Addendum under the provisions of Ind. Code § 8-1-2-24 and Ind. Code § 8-1-2-25. Ind. Code § 8-1-2-24(a) 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.

Ind. Code § 8-1-2-25 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, customer-specific contracts, including tailored-rate contracts such as the 2009 Contract and the Addendum presented for review in this proceeding, 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 Public Service Commission Act.

We find that the Addendum and the evidence submitted in support of the Addendum satisfy all of the legal requirements imposed by Ind. Code §§ 8-1-2-24 and 25. The Addendum will result in Vectren South continuing to obtain reasonably sufficient revenues from the provision of electric service to Berry's Facilities. The Addendum facilitates an economic expansion that will foster new employment in southwest Indiana. An inspection of the Confidential Information demonstrates that the rates provide for the recovery of incremental costs plus a reasonable and just contribution to the recovery of Petitioner's fixed costs and therefore are reasonable and just.

The Commission further notes that the OUCC does not oppose the terms of the Addendum. It indicated the Addendum is acceptable to it because any additional costs will be borne by Vectren South's shareholders until its next base rate case and the OUCC would address any issues regarding cost allocation at that time. The OUCC also recognizes Vectren South is seeking to retain an important industrial customer while assuring that the southern Indiana economy has employment, both of which are laudable goals and in the best interests of Vectren South's shareholders and ratepayers.

For all these reasons, we find and conclude that the rates and charges and terms and conditions contemplated by the Addendum are just and reasonable, that the Addendum is practicable and advantageous to the parties, and is not inconsistent with the purposes of the Public Service Commission Act. We further find that the Addendum is in the public interest and should therefore be approved.

8. Confidential Information. Vectren South sought a determination that Confidential Information involved in this proceeding be exempt from public disclosure under Ind. Code § 8-1-2-29 and Ind. Code ch. 5-14-3. These requests were supported by the direct testimony of Thomas L. Bailey and the affidavit of Rodgers Greenwalt. By the Commission's April 17, 2014 docket entry, the Presiding Officers granted Vectren South's request, finding the Confidential Information to be preliminarily confidential after which such information was submitted under seal. After reviewing the Confidential Information, we find all such information qualifies as confidential trade secret information pursuant to Ind. Code § 5-14-3-4 and Ind. Code § 24-2-3-2. This information has independent economic value from not being generally known or readily ascertainable by proper means. Vectren South and Berry take reasonable steps to maintain the secrecy of the information and disclosure of such information would cause harm to both Vectren South and Berry. Therefore, we affirm the preliminary ruling and find this information should be exempted from the public access requirements contained in Ind. Code ch. 5-14-3 and Ind. Code § 8-1-2-29, and held confidential and protected from public disclosure by this Commission.

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

1. The Addendum by and between Petitioner and Berry submitted in this Cause is approved.

2. The material submitted to the Commission under seal is declared to contain trade secret information as defined in Ind. Code § 24-2-3-2 and therefore is exempted from the public access requirements contained in Ind. Code ch. 5-14-3 and Ind. Code § 8-1-2-29.

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

STEPHAN, MAYS-MEDLEY AND ZIEGNER CONCUR; WEBER ABSENT:

APPROVED: OCT 01 2014

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



Brenda A. Howe
Secretary to the Commission