

**ORIGINAL**



STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF INDIANA GAS COMPANY, )  
INC. d/b/a VECTREN ENERGY DELIVERY OF INDIANA, )  
INC. FOR (1) ISSUANCE OF A CERTIFICATE OF )  
PUBLIC CONVENIENCE AND NECESSITY PURSUANT )  
TO IND. CODE § 8-1-2-23 AND § 8-1-2-87.5; (2) )  
APPROVAL OF A SPECIAL CONTRACT FOR )  
CONSTRUCTION AND NATURAL GAS )  
TRANSPORTATION SERVICE WITH INDIANAPOLIS )  
POWER & LIGHT COMPANY PURSUANT TO IND. )  
CODE § 8-1-2-25; AND (3) PROCEDURES TO PROTECT )  
THE CONFIDENTIALITY OF PORTIONS OF THE )  
CONTRACT )

CAUSE NO. 44502

APPROVED: JAN 14 2015

ORDER OF THE COMMISSION

**Presiding Officers:**  
**David E. Ziegner, Commissioner**  
**Aaron A. Schmoll, Senior Administrative Law Judge**

On June 13, 2014, Indiana Gas Company, Inc. d/b/a Vectren Energy Delivery of Indiana, Inc. (“Vectren North” or “Petitioner”) filed its Verified Petition requesting the Indiana Utility Regulatory Commission (“Commission”) grant it a Certificate of Public Convenience and Necessity (“CPCN”) for construction of a new gas transportation pipeline along with approval of a Special Pipeline Construction and Natural Gas Firm Transportation Service Contract (“Contract”) between Petitioner and Indianapolis Power & Light Company (“IPL”).

The Commission conducted a public hearing on October 15, 2014, in Room 222 at the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Petitioner, IPL, and the Indiana Office of Utility Consumer Counselor (“OUCC”) were present and participated. No members of the general public appeared or sought to testify at the hearing.

The Commission, based upon the applicable law and the evidence herein, now finds:

**1. Commission Jurisdiction and Notice.** Due legal and timely notice of the commencement of the public hearing in this Cause was given and published by the Commission as required by law. Petitioner operates a “public utility” and a “gas utility” as those terms are defined in the Public Service Commission Act, as amended. Indiana Code § 8-1-2-87.5 sets forth the criteria that a gas utility must meet in order for the Commission to approve a necessity certificate for the transportation of gas. Pursuant to Ind. Code §§ 8-1-2-24 and 25, the Commission must review and approve special contracts between a utility and its customers. The Commission, therefore, has jurisdiction over Petitioner and the subject matter herein.

2. **Petitioner's Characteristics.** Vectren North is a corporation organized and existing under the laws of the State of Indiana and has its principal office located at One Vectren Square, Evansville, Indiana. Vectren North is engaged in the business of purchasing, transporting, distributing, and selling natural gas to the public in numerous counties in Indiana. Vectren North owns, operates, manages, and controls plant, property, equipment, and facilities that are used and useful for the production, transmission, distribution, and furnishing of natural gas service to approximately 570,000 end users in Indiana.

3. **Relief Requested.** Petitioner requests that the Commission grant it a CPCN allowing it to construct and operate Petitioner's proposed pipeline and that the Commission approve the Contract between Petitioner and IPL and find it to be reasonable, just, practicable, advantageous, and consistent with the purposes of the Act. Petitioner also requests the Commission find, pursuant to Ind. Code ch. 5-14-3 and § 8-1-2-29, that certain provisions of the Contract and testimony describing these provisions ("Confidential Information") contain "trade secrets" and are excepted from access to public records provisions under the statute.

4. **Vectren North Case-in-Chief.** Mr. Jamoni E. Harper, Regional Sales Manager for Petitioner, testified that the Contract resulted from good faith, arms-length negotiations between Vectren North and IPL following IPL's Request for Proposals ("RFP") for IPL's Eagle Valley Combined Cycle Gas Turbine ("Eagle Valley CCGT") in Martinsville, Indiana. He stated that IPL conducted a competitive bidding process soliciting bids from five companies, including Vectren North, and that Vectren North was the successful bidder to construct a new transmission pipeline that will interconnect with Texas Gas Transmission, LLC ("TGT") and Rockies Express Pipeline, LLC ("REX") and extend to the Eagle Valley CCGT.

Mr. Harper testified that the pipeline will have sufficient capacity to serve the Eagle Valley CCGT as well as potential future needs of other large customers along the pipeline. As a result, he indicated the Contract will benefit Vectren North customers because it will be a significant update to the area's system, promote economic growth in the region, and create new construction jobs.

Mr. Harper described the terms and conditions of the Contract and testified that the primary term of the Contract is 35 years beginning on the in-service date, with automatic five-year renewal periods, unless terminated. He stated that under the Contract Vectren North will provide gas transportation service for IPL from third party gas suppliers and redeliver the natural gas to IPL's delivery point at the end of a 13-mile lateral between TGT and IPL's delivery point, which Vectren North will construct.

Mr. Harper testified that IPL and Vectren North had agreed to a rate structure that included a demand charge and volumetric charge, and that in the event IPL defaulted on the Contract IPL would be responsible for various termination penalties, outstanding transportation charges, and costs to remove the pipeline from IPL's property. He also stated that Vectren North must obtain IPL's consent before other users can be served through the new pipeline.

Mr. Harper testified that the Contract and CPCN will produce numerous public benefits and that Vectren North's existing and future customers will benefit from the new contributions

made by IPL. He stated the Contract and CPCN will not adversely impact the adequacy or reliability of service provided to other customers, and that the CPCN and rates contained in the Contract are practical and advantageous to IPL and Vectren North, in the public interest, and not inconsistent with the purpose of Indiana utility regulation. Mr. Harper testified that the Contract and proposed CPCN are reasonable and just, and that Vectren North possesses the requisite technical and managerial expertise to construct the pipeline and provide service to IPL pursuant to the Contract. He also stated that Vectren North has the financial capability to construct and operate the proposed pipeline.

In the confidential unredacted version of his testimony Mr. Harper described the Confidential Information. He testified that the Confidential Information contains pricing, demand, term and other provisions that were negotiated between IPL and Vectren North on a confidential basis. Vectren North is in the process of negotiating other economic development projects and could potentially engage in similar construction or service arrangements. If these terms became generally known or readily available, parties in negotiation with Vectren North could use this knowledge against Vectren North. Knowledge of these terms by other parties would establish certain benchmarks and a price ceiling in future negotiations, thereby limiting the potential revenues and benefits that could accrue to Vectren North and its customers.

Mr. Harper explained Vectren North 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 North and IPL, 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 Contract. Accordingly, Vectren North requested the Commission find the Confidential Information to be excluded from public disclosure.

**5. OUC Case-in-Chief.** Ms. Heather R. Poole testified on behalf of the OUC. Ms. Poole testified that she reviewed the unredacted version of Mr. Harper's testimony and exhibits, the Vectren Affidavit, and confidential Vectren North discovery responses. She testified that the OUC recommends approval of Vectren North's request for a CPCN and indicated that the CPCN is in the public interest, as it will provide an increase in efficient, reliable energy, and that it will give other potential customers in the area a chance to obtain natural gas service.

Ms. Poole also testified that the OUC does not oppose the terms of the Contract. She stated that although the OUC believes Vectren North's expected revenue appears to cover all of Vectren North's cost related to the construction of the pipeline over the life of the Contract, the OUC was concerned about a hypothetical situation in the future in which revenue received might not cover the expenses.

Ms. Poole did recognize some procedures and methods in place for Vectren North to control costs. She cited to a Vectren North discovery response which noted that Vectren North has an incentive to keep costs low prior to including costs in rate base because any costs outside of budget will be borne by Vectren North and not ratepayers.

The OUC requested that Vectren North provide the OUC updates regarding progress

of the bid process, as well a copy of the winning bid. The OUCC also wanted to be able to review and analyze all costs related to this project, which will be included in rate base with the filing of a future rate case. If the income received from IPL does not recover all costs of the investment, the OUCC requested reserving the right to dispute the cost relating to the construction of the pipeline.

**6. Vectren North Rebuttal.** Mr. Harper provided rebuttal testimony on behalf of Petitioner. He stated that Vectren North has an incentive to keep pipeline costs low. He also testified that Vectren North does not oppose the OUCC's right to review and analyze all costs relating to the pipeline, nor does it oppose the OUCC's right to later challenge any unreasonable rates or costs paid by ratepayers.

However, Mr. Harper testified that Vectren North does not believe the Commission should predetermine in this case that recovery of some portion of IPL's investment costs are not recovered through revenue from IPL. He stated that assuming the proposed pipeline is devoted to providing utility service, the pipeline will be used and useful for the convenience of the public.

**7. Discussion and Findings.** Petitioner seeks approval under Indiana Code § 8-1-2-23. Section 23 of the Indiana Code provides:

The commission shall keep itself informed of all new construction, extensions and additions to the property of such public utility and shall prescribe the necessary forms, regulations and instructions to the officers and employees of such public utility for the keeping of construction accounts which shall clearly distinguish all operating expenses and new construction. Unless a public utility shall obtain the approval by the commission of any expenditure exceeding ten thousand dollars (\$10,000) for an extension, construction, addition or improvement of its plant and equipment, the commission shall not, in any proceeding involving the rates of such utility, consider the property acquired by such expenditures as a part of the rate base, unless in such proceeding the utility shall show that such property is in fact used and useful in the public service; Provided, That the commission in its discretion may authorize the expenditure for such purpose of a less amount than shown in such estimate.

The purpose of Section 23 is to provide preapproval of requested projects for future recovery in a utility base rate case. By doing so, the requesting utility has some level of certainty of future cost recovery. In the Commission's Order in *American Suburban Utilities, Inc.*, Cause No. 41254 (Apr. 14, 1999), we set forth our analytical framework for considering a request for preapproval of expenditures pursuant to Ind. Code § 8-1-2-23:

When faced with such a request, the first question we must ask is whether an expenditure of any amount is reasonably necessary to assure reasonable and adequate service. If so, we must proceed to the second question: what amount reasonably needs to be invested?

*Id.* at 14; *see also*, *Indiana-American Water Co.*, Cause Nos. 41692 (Nov. 8, 2000) and 43320 (Jan. 30, 2008).

Based upon our review of the evidence in the record, we find the evidence demonstrates a need for the new pipeline. The Commission, in Cause No. 44339, approved IPL's request to construct the Eagle Valley CCGT. Provision of natural gas to power the Eagle Valley CCGT is essential. IPL issued an RFP in 2013 to provide for a competitive bidding process, and Petitioner was chosen to undertake construction of the pipeline. However, for the purpose of pre-approving the expenditures associated with the pipeline, Petitioner did not offer evidence concerning the estimated cost of the pipeline. Thus, while we find the pipeline is reasonably necessary, and address that aspect below under Ind. Code § 8-1-2-87.5, the Commission is unable to, at this time, pre-approve any specific dollar amount associated with the project.

The OUCC expressed some concern regarding any variations between estimated and actual costs to construct the pipeline. We find Petitioner shall provide the Commission, under this Cause, with quarterly updates regarding the bid process, as well as a copy of the winning bid. Petitioner has recognized the OUCC's right to review and analyze the costs related to this project, which may be included in rate base with the filing of a future rate case.

Petitioner also seeks a necessity certificate for the pipeline under Ind. Code § 8-1-2-87.5. Section 87.5(e) provides as follows:

The commission shall grant the necessity certificate only if the commission has found from the evidence that:

- (1) the applicant has the power and authority to obtain the certificate and render the requested service;
- (2) the applicant has the financial ability to provide the requested service;
- (3) public convenience and necessity require the providing of the requested service giving consideration to the availability of gas service from any gas utility authorized to serve end use customers within the geographic area covered by the application; and
- (4) the public interest will be served by the issuance of the necessity certificate.

Petitioner is one of the four largest natural gas utilities within the State of Indiana. As a regulated natural gas utility already providing service within the state, Petitioner has the power and authority to obtain the certificate. In addition, Petitioner provided financial statements to indicate its financial ability to construct the proposed pipeline. Petitioner's construction of the pipeline will provide IPL's Eagle Valley CCGT the fuel necessary for its operation. The new pipeline will not only have sufficient capacity to serve IPL pursuant to the Contract, but also to serve the potential future needs of other large customers along the new pipeline. This project will be a significant update to the area's system, further promote economic growth in the region and create new construction jobs. Approval of a necessity certificate will also produce other public benefits, including an increase in efficient, reliable energy for Indiana residents. Both Vectren North and the OUCC provided evidence that the pipeline is in the public interest and thus should be approved by the Commission. The Commission finds that Petitioner has demonstrated that it has satisfied the elements under Section 87.5, and grants the necessity certificate to Petitioner for the construction and operation of the pipeline.

Finally, Petitioner seeks approval of the Contract. Indiana Code § 8-1-2-24 provides in pertinent part that:

Nothing in this chapter shall be taken to prohibit a public utility from entering into any reasonable arrangement with its customers or consumers 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.

Indiana 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.

Thus, customer-specific 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 Public Service Commission Act.

The Confidential Information demonstrates that the rates provide for the recovery of project costs and will help ensure the lowest cost possible. The Contract is the result of arms-length negotiation, and the OUCC reviewed the Contract and agreed that the terms were reasonable. Ms. Poole stated in her testimony that based upon the review of confidential calculations provided by Petitioner, all costs of the pipeline will be recovered through IPL's payments over the life of the Contract. Accordingly, the Commission finds that the rates contained within the Contract are reasonable and just. We find that the Contract and the evidence submitted in support of the Contract satisfy all of the legal requirements imposed by Sections 24 and 25, and accordingly, we approved the Contract.

Finally, the Commission finds that pursuant to Ind. Code § 36-2-2-23, the County Commissioners of the counties in which the necessity certificate is herein approved, have the Commission's consent to grant Petitioner such licenses, permits or franchises as may be required for the use of County property for the construction and operation of the pipeline approved in this Order.

**8. Confidential Information.** Pursuant to the July 9, 2014 Docket Entry in this Cause, the Confidential Information prefiled with this Commission by Petitioner was found to be confidential on a preliminary basis. The Confidential Information therein constitutes trade secrets as defined in Ind. Code § 24-2-3-2, and therefore should be exempted from the public access requirements contained in Ind. Code ch. 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. A necessity certificate is issued to Vectren North to construct and operate its proposed pipeline as requested in this Cause.

2. The County Commissioners of the counties in which the necessity certificate is herein approved have the consent of the Indiana Utility Regulatory Commission to grant such licenses, permits or franchises for the use of county property by Vectren North as may be required for the construction and operation of the proposed pipeline.

3. The Contract by and between Petitioner and IPL submitted in this Cause shall be approved.

4. Petitioner shall provide, under this Cause, quarterly updates regarding the bid process. Such quarterly updates shall be provided no later than one month after the end of each calendar quarter, and shall continue until the time a winning bid is awarded. Petitioner shall also provide the winning bid. To the extent not already covered by the Presiding Officers' July 9, 2014 Docket Entry, Petitioner may seek protection of any confidential information prior to submitting this information.

5. The Confidential Information described herein is 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 ch. 5-14-3 and § 8-1-2-29.

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

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

**APPROVED:**      JAN 14 2015

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

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