

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

APPLICATION OF INDIANA GAS COMPANY,)
INC. D/B/A VECTREN ENERGY DELIVERY)
OF INDIANA, INC. ("VECTREN NORTH"))
FOR A NECESSITY CERTIFICATE ISSUED)
ON AN EMERGENCY BASIS AUTHORIZING)
IT TO RENDER NATURAL GAS SERVICE TO)
THE PUBLIC IN CERTAIN AREAS OF)
MONTGOMERY COUNTY PURSUANT TO IC)
§ 8-1-2-87 AND IC § 8-1-2-113)

CAUSE NO. 44263

APPROVED:

DEC 19 2012

ORDER OF THE COMMISSION

Presiding Officers:

James D. Atterholt, Chairman

Lorraine L. Seyfried, Chief Administrative Law Judge

On October 29, 2012, Indiana Gas Company, Inc. d/b/a Vectren Energy Delivery of Indiana, Inc. ("Vectren North" or "Applicant") filed its Verified Emergency Application ("Application") with the Indiana Utility Regulatory Commission ("Commission"). In its Application, Vectren North requested the Commission to grant it a Certificate of Public Convenience and Necessity ("Necessity Certificate") to render gas utility service to the public in certain areas of Montgomery County, Indiana adjacent to the territory Applicant presently is authorized to serve. Also on October 29, 2012, Applicant filed the testimony of James M. Francis in support of its Application.

Pursuant to notice duly published as required by law, a public evidentiary hearing in this Cause was held on November 19, 2012 at 1:30 p.m. in Room 224, 101 West Washington Street, Indianapolis, Indiana. Vectren North and the Indiana Office of Utility Consumer Counselor ("OUCC") appeared by counsel and participated in the evidentiary hearing.

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

1. Notice and Jurisdiction. 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. Applicant operates a public gas utility and, as such, is subject to the jurisdiction of the Commission as provided in the Public Service Commission Act. The provisions of said Act authorize the Commission to act in this proceeding. The Commission, therefore, has jurisdiction over Applicant and the subject matter herein.

2. Applicant's Characteristics. Applicant is a public corporation organized and existing under the laws of the State of Indiana and has its principal office located at One Vectren

Square in Evansville, Indiana. Applicant is engaged in the business of purchasing, transporting, distributing, and selling natural gas to the public pursuant to Necessity Certificates. It owns, operates, manages, and controls, among other things, plant, property, equipment and facilities which are used and useful for the production, transmission, distribution and furnishing of natural gas service to customers in central and southern Indiana.

3. **Relief Requested.** Vectren North requests the Commission grant it authority to extend natural gas service into an unserved rural area in Montgomery County, Indiana (the "Expansion Area"). The area is immediately adjacent to Vectren North's currently authorized service area. The Expansion Area is:

Montgomery County, South Union Township: Township 18N, Range 4W,
Sections 25 and 36

Vectren North also requests the Commission consent to the issuance by the County Commissioners in Montgomery County of all necessary licenses or permits for such use of County property for utility purposes.

4. **Applicant's Prefiled Evidence.** Mr. James M. Francis, Director of Engineering and Asset Management for Vectren North's parent company, testified that the Expansion Area is not currently certificated or receiving gas distribution service from any gas utility. Roachdale Municipal Gas Utility is the closest other natural gas distribution utility to the Expansion Area, and their lines are approximately 10 miles away.

Mr. Francis testified concerning the interest in having natural gas extended to the Expansion Area. He testified that Herr-Voss, a metal processing company, requested natural gas service commence before the grand opening of its facility expansion on November 7, 2012. Herr-Voss is a key supplier to Nucor Steel, one of Vectren North's largest natural gas customers. Mr. Francis also sponsored an affidavit by Mick Pappas, Herr-Voss' Purchasing Director, which explained that Herr-Voss' production process is temperature sensitive. Mr. Pappas' affidavit indicates Herr-Voss has been using propane to heat the facility, which is less effective as outside temperatures drop. Herr-Voss requests natural gas service to improve safety, more effectively heat the facility's production process and minimize potential disruptions at its grand opening. Accordingly, Mr. Francis stated Vectren North would begin pipeline work and requests permission to begin providing service to the Expansion Area immediately.

Mr. Francis testified Vectren North possesses the requisite technical and managerial expertise to provide service to the Expansion Area. He stated that Vectren North field personnel are well-trained and its operation and maintenance employees are properly qualified. In addition, all operational activities have oversight by experienced engineers and professionals. He stated Vectren North has sufficient financial resources to provide gas distribution service to the proposed Expansion Area as shown by Vectren North's financial statements.

Mr. Francis stated certification of the proposed Expansion Area will have a positive impact. He testified the economic development potential of the Expansion Area will increase through the availability of gas service. Vectren North's fixed costs will be collected over a

larger customer base/sales volume and no additional employees will be needed to extend service to the relatively small Expansion Area. Finally, Mr. Francis stated that due to the circumstances, Vectren North will provide service to Herr-Voss on November 7, 2012, but understands that a Necessity Certificate is required.

5. Evidence presented at the Evidentiary Hearing. At the evidentiary hearing, Mr. Francis testified that Vectren North's first indication that Herr-Voss needed natural gas service was October 10, 2012. Tr. at 8. He testified that he did not know how long Herr-Voss' facility expansion had been under construction, but assumed it was several months prior to October 10, 2012. Tr. at 6. He also stated that he did not know why Herr-Voss did not contact Applicant sooner or when Herr-Voss realized the continued use of propane was an issue. Tr. at 8-9.

Mr. Francis testified that between October 10, 2012 and October 29, 2012, Vectren North evaluated the route and how it would provide service to Herr-Voss. Tr. at 13. He stated part of that determination includes an evaluation of whether Vectren North needs franchise certification. *Id.* He stated that construction was commenced on November 7, 2012 and completed on November 9, 2012. Tr. at 13-14. Once Herr-Voss' equipment was ready, Vectren North began providing natural gas service on November 13, 2012. Tr. at 15.

When asked about the use of propane, Mr. Francis testified that he did not know why the use of propane was a safety issue for Herr-Voss or how the use of propane could disrupt the grand opening. *Id.* When questioned further by the OUCC concerning Applicant's response to Data Request 1.3 (OUCC's Ex. CX-1), Mr. Francis noted that Vectren North's Industrial and Commercial Loadsheets, dated September 12, 2012, indicates the natural gas service requested by Herr-Voss is to be used for space heating purposes. Tr. at 11. And when asked how space heating constitutes an emergency, he stated, "I would assume not." *Id.*

6. Commission Discussion and Findings. Ind. Code § 8-1-2-87(c) provides that,

no gas utility shall commence the rendering of gas distribution service in any rural area in the state of Indiana in which it is not actually rendering gas distribution service ... without first obtaining from the commission a necessity certificate authorizing such gas distribution service....

Pursuant to Ind. Code § 8-1-2-87(d), the Commission shall grant an application for a Necessity Certificate if it makes the following findings:

- (1) that the applicant has the power and authority to obtain the certificate and to render the proposed gas distribution service if it obtains the certificate;
- (2) that the applicant has the financial ability to provide the proposed service;
- (3) that the public convenience and necessity require the providing of the proposed service; and
- (4) that the public interest will be served by the issuance of the necessity certificate.

Applicant also filed its request in this Cause as a Verified Emergency Application. The

Commission's emergency powers are found in Ind. Code § 8-1-2-113, which provides in relevant part:

[t]he commission may, when it considers necessary to prevent injury to the business or interests of the people or any public utility of this state in case of any emergency to be judged by the commission, temporarily alter, amend, or with the consent of the public utility concerned, suspend any existing rates, service, practices, schedules, and order relating to or affecting any public utility or part of any public utility in this state.

Consequently, the Commission has the authority to evaluate the evidence presented, determine whether an emergency exists and take such action as it deems necessary to prevent harm to the utility or the public.

A grant of emergency relief requires proof that a situation exists which absent immediate corrective action will result in serious harm to either, or both, the petitioning utility and its customers. *Hoosier Energy Rural Elec. Coop., Inc.*, Cause No. 37294, 1984 Ind. PUC LEXIS 777, at *5 (IURC February 15, 1984). The petitioning utility bears the burden of presenting sufficient evidence to establish an emergency situation exists. *Petition of HVL Utilities, Inc. and HVL Services, Inc.*, Cause Nos. 36630 and 36631, 1983 Ind. PUC LEXIS 682, at *14 (IURC January 11, 1983). Such evidence should be evaluated by the Commission in light of the anticipated results of taking no immediate action to remedy the situation. *Id.* If the evidence demonstrates that an emergency situation exists such that immediate action is required to prevent serious injury, then the Commission should grant a reasonable level of interim emergency relief subject to terms and conditions that the Commission deems appropriate. *Id.*

While it is unclear whether the grand opening for Herr-Voss' facility expansion occurred as contemplated on November 7, 2012, the evidence demonstrates that Vectren North has already begun providing service to Herr-Voss. With Herr-Voss already receiving service and no other evidence indicating impending serious harm, the Commission finds that the emergency relief requested by Vectren North is no longer applicable. Although Applicant's request for emergency relief is now moot, we do have grave concerns with the evidence presented by Vectren North in this proceeding.

While Mr. Frances testified that Vectren North first received the request for service from Herr-Voss on October 10, 2012, the OUCC's Ex. CX-1 indicates a customer request date of September 12, 2012 for service by October 15, 2012.¹ The exhibit also includes a copy of a bill sent to Herr-Voss on October 10, 2012 for the cost of extending natural gas service, which presumably would have been based on an earlier investigation and analysis by Vectren North (as described by Mr. Frances at the hearing). In addition, at the hearing Mr. Francis appeared to be unaware that the request for natural gas service by Herr-Voss was for space heating purposes. He was also unaware of the specific issues and consequences presented by the continued use of propane at the facility for the grand opening. Consequently, based on the evidence presented at

¹ While no evidence was offered concerning the reason for Herr-Voss' purported delay in requesting service, we find it curious that a national company constructing a 20,000 square foot expansion that takes "many months" to complete does not inquire about the provision of natural gas service until construction is nearly complete.

the hearing, it is unclear when Vectren North knew or should have known it needed a Necessity Certificate to provide natural gas service to Herr-Voss, and what the actual impact would have been of not providing service prior to receiving Commission approval.

As noted above, it is the petitioner that bears the burden of demonstrating an emergency requiring immediate action exists. Consequently, we expect one that seeks emergency relief to have fully investigated the situation and to have a thorough and complete understanding of the facts and need for immediate action. While we understand Vectren North's desire to satisfy a potential customer's request for service when needed, it is incumbent upon Vectren North to act reasonably and responsibly in doing so. This includes establishing policies and instituting steps within the utility to ensure Commission approval is sought and obtained in a timely manner, and when an emergency situation exists, providing a fully documented and consistent explanation of the circumstances. Failure to do so may result in a Class B infraction for failure to comply with the Public Service Commission Act. Ind. Code § 8-1-2-109.

Notwithstanding the above and based on the evidence presented, the Commission finds that Vectren North does possess the requisite corporate power and authority and financial capability to provide natural gas service to the Expansion Area. The provision of such service by Vectren North to the Expansion Area will further public convenience and necessity and is in the public interest. The Commission also notes that no party opposed Applicant's request in this Cause. Accordingly, the Commission finds that Vectren North's request for a Necessity Certificate is granted.

7. Consent to the Granting of Licenses, Permits and Franchises. We find that pursuant to Ind. Code § 36-2-2-23, the County Commissioners of the County in which Certificate of Public Convenience and Necessity is herein approved may grant to Vectren North such licenses, permits or franchises as may be required for the use of county property for the provision of gas distribution service in the Expansion Area described in Paragraph 3 above.

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

1. A Certificate of Public Convenience and Necessity shall be and is hereby issued to Vectren North to provide natural gas service for the area described in Paragraph 3 of this Order.

2. This Order shall be the sole evidence of such Certificate of Public Convenience and Necessity.

3. The County Commissioners of Montgomery County in which the Certificate of Public Convenience and Necessity 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 provision of gas distribution services authorized herein.

4. This Order shall become effective on and after the date of its approval.

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

APPROVED: DEC 19 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**