

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF THE BOARD OF)
DIRECTORS FOR UTILITIES OF THE)
DEPARTMENT OF PUBLIC UTILITIES OF THE)
CITY OF INDIANAPOLIS, ACTING IN ITS)
CAPACITY AS TRUSTEE OF A PUBLIC)
CHARITABLE TRUST FOR THE PROVISION OF)
ENERGY SERVICES, D/B/A CITIZENS THERMAL,)
FOR (A) AUTHORITY PURSUANT TO INDIANA)
CODE SECTION 8-1-2-42(A), AND TO THE EXTENT)
NECESSARY AS AN ALTERNATIVE REGULATORY)
PLAN AUTHORIZED UNDER INDIANA CODE)
SECTION 8-1-2.5-6, TO IMPLEMENT A RATE)
ADJUSTMENT TRACKING PROVISION TO TRACK)
THE OPERATING AND MAINTENANCE COST)
SAVINGS REALIZED AND CAPITAL AND)
FINANCING COSTS INCURRED AS A RESULT OF)
THE IMPLEMENTATION OF A PLAN TO CONVERT)
CERTAIN COAL-FIRED AND OIL-FIRED BOILERS)
USED TO GENERATE STEAM TO BE FUELED WITH)
NATURAL GAS; AND (B) ALL OTHER)
APPROPRIATE RELIEF)

CAUSE NO. 44149

APPROVED: AUG 08 2012

ORDER OF THE COMMISSION

Presiding Officers:
Larry S. Landis, Commissioner
Loraine L. Seyfried, Chief Administrative Law Judge

On January 18, 2012, the Board of Directors for Utilities of the Department of Public Utilities of the City of Indianapolis, acting in its capacity as trustee of a public charitable trust for the provision of energy services, d/b/a/ Citizens Thermal, ("Petitioner" or "Citizens Thermal") filed with the Indiana Utility Regulatory Commission ("Commission") its Verified Petition in this Cause requesting certain relief in connection with Citizens Thermal's proposed conversion of coal-fired and oil-fired boilers at Petitioner's Perry K steam production plant ("Perry K Plant") to burn natural gas ("Natural Gas Conversion Plan" or "Conversion Plan").

On February 24, 2012, Petitioner filed its case-in-chief in support of the Verified Petition, consisting of the direct testimony and exhibits of Michael D. Strohl, Christopher H. Braun, P.E., Jeffrey A. Willman, Donald E. Wolf, P.E., David C. Kiesel, P.E. and Korlon L. Kilpatrick II.

On April 16, 2012, the Citizens Industrial Group, consisting of Eli Lilly & Company and Corn Products International, Inc., ("Industrial Group") filed its petition to intervene in this

proceeding, which was granted by docket entry on April 23, 2012.

On June 4, 2012, Citizens Thermal, the OUCC and the Industrial Group (collectively, the “Parties”) filed a Notice of Settlement and Joint Motion to Modify the Procedural Schedule, indicating the Parties had reached a settlement of all of the issues in this Cause. On June 7, 2012, Petitioner filed the Verified Supplemental Testimony of Korlon L. Kilpatrick II, which included as an exhibit the Settlement Agreement entered into by the Parties. That same day, the OUCC filed the testimony of Michael D. Eckert and Maclean Eke in support of the Settlement Agreement.

Petitioner also filed the following: (1) Petitioner’s Exhibit 1, a proof of publication of the Verified Petition in this Cause; (2) Petitioner’s Exhibit 2, a letter from the United States Environmental Protection Agency (“U.S. EPA”) extending the date by which Petitioner is required to comply with rules regarding emissions from the Perry K Plant; (3) Petitioner’s Exhibit 3, Petitioner’s verified response to a docket entry issued by the Commission on June 11, 2012; and (4) Petitioner’s Exhibit 4, an analysis requested by the Commission regarding Petitioner’s assumptions related to future natural gas prices.

Pursuant to notice as provided by law, proof of which was incorporated into the record and placed in the Commission’s official files, a public hearing was commenced on June 15, 2012, at 10:00 a.m. in Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Petitioner, the OUCC, and the Industrial Group appeared at the hearing. At the hearing, the testimony and exhibits of Petitioner and the OUCC were admitted into the record without objection and the witnesses were made available for questions.

Based on the applicable law and the evidence of record, the Commission now finds:

1. Notice and Jurisdiction. Due, legal, and timely notice of the public hearing held on June 15, 2012, was given and published as required by law. Petitioner is a municipal steam utility and an “energy utility” within the meaning of Ind. Code § 8-1-2.5-2, subject to the jurisdiction of the Commission in the manner and to the extent provided by the laws of the State of Indiana, including certain sections of the Public Service Commission Act, as amended. The Commission has jurisdiction over Petitioner and the subject matter of this proceeding.

2. Petitioner’s Organization and Business. Petitioner is the Board of Directors for Utilities of the Department of Public Utilities of the City of Indianapolis, acting in its capacity as trustee of a public charitable trust for the provision of energy services, d/b/a/ Citizens Thermal. Petitioner is engaged in the business of providing steam utility service to approximately 200 customers in the downtown and near downtown area in the City of Indianapolis by means of utility plant, properties, equipment and facilities owned, operated, managed, and controlled by it, including the Perry K Plant. Petitioner’s principal office is located at 2020 North Meridian Street, Indianapolis, Indiana.

3. Relief Requested in the Verified Petition. In the Verified Petition, Petitioner requested certain relief in connection with the proposed Natural Gas Conversion Plan.

Specifically, the Verified Petition requests the Commission find that the Natural Gas Conversion Plan is reasonable and in the public interest. Additionally, the Verified Petition requests approval of a proposed rate adjustment tracking mechanism pursuant to Ind. Code § 8-1-2-42(a) and, to the extent necessary, Ind. Code § 8-1-2.5-6.

4. Petitioner's Case-in-Chief Testimony. Mr. Michael D. Strohl, Vice President, Customer Relationships for Citizens Energy Group, sponsored the Verified Petition as an exhibit, and provided an overview of Citizens Energy Group, including the Citizens Thermal steam utility and other utilities owned and operated by Citizens Energy Group.

Mr. Strohl testified that Citizens Thermal's recent base rate increases have been driven in large part by rising operating, maintenance and capital costs incurred to operate the Perry K plant's coal-fired boilers. He stated that those cost pressures, combined with declines in natural gas prices, have increased the competitiveness of large steam customers installing their own on-site boilers fueled with natural gas. In order to examine those and other issues, Citizens Thermal formed a Steam Business Review Team to conduct an in-depth review and analysis of all aspects of Petitioner's steam business.

Mr. Strohl explained that after conducting its analysis, the Steam Business Review Team concluded the Natural Gas Conversion Plan should be implemented. Mr. Strohl testified the Natural Gas Conversion Plan is the least cost strategy for the utility to maintain competitive rates and quality service. According to Mr. Strohl, the Natural Gas Conversion Plan will result in significant capital, operating and maintenance cost savings for Petitioner and its customers in the future and create substantial environmental benefits for the City of Indianapolis. Mr. Strohl testified Citizens Thermal also engaged Burns & McDonnell Engineering Company, Inc. ("Burns & McDonnell") to complete a study addressing the anticipated costs that would be incurred by Petitioner for the Perry K Plant to comply with the Industrial Boiler Maximum Achievable Control Technology Rule ("Boiler MACT Rule"), promulgated by the U.S. EPA, as well as a high level study of the costs of converting certain boilers at the Perry K Plant to burn natural gas. Mr. Strohl noted that the Natural Gas Conversion Plan was discussed with Petitioner's largest customers, reviewed and approved by Petitioner's management team and the Citizens Energy Group Board of Directors. Mr. Strohl further explained Petitioner's plan to secure financing for the Natural Gas Conversion Plan, which consists primarily of long term debt.

Mr. Strohl concluded by describing the requests for relief in the Verified Petition. First, the Verified Petition requests the Commission find that the Natural Gas Conversion Plan is reasonable and in the public interest. Second, the Verified Petition requests that the Commission grant Petitioner approval to implement a temporary rate adjustment tracking mechanism that Petitioner will use to track the operating and maintenance cost savings realized as a result of implementing the Natural Gas Conversion Plan and pass those savings along to customers. To the extent not recovered through base rates, Petitioner requests approval to also track and recover financing costs associated with the Natural Gas Conversion Plan.

Mr. Christopher H. Braun, Vice President, Energy Operations for Citizens Energy Group,

provided an overview of Petitioner's steam production and distribution systems, the business rationale for the Natural Gas Conversion Plan and the impact the Conversion Plan would have on the operations of Petitioner's steam business. He explained that the boilers at Petitioner's Perry K Plant primarily burn coal, which presents numerous operational challenges to the steam utility. Among these challenges are higher operating and maintenance costs and increased concerns regarding emissions. Mr. Braun explained that by converting four of the coal-fired boilers (Boilers 12, 16, 17 and 18) at the Perry K Plant to burn natural gas, Petitioner will experience reduced operating and maintenance costs and will avoid capital costs that would otherwise be incurred to comply with the Boiler MACT Rule, which governs emission limits for Petitioner's coal-fired boilers.

Mr. Braun also addressed the increased gas supply requirements that Citizens Thermal will experience as a result of the Conversion Plan. Mr. Braun agreed with Mr. Willman's projected natural gas and coal price assumptions, which are described below. Finally, Mr. Braun testified that the Natural Gas Conversion Plan will allow Petitioner to purchase more steam from Covanta Energy and reduce annual fuel consumption at the Perry K Plant due to increased boiler efficiency and reduced minimum load requirements.

Mr. Jeffrey A. Willman, Director of Customer Relations and Government Affairs for Citizens Energy Group, provided additional detail regarding the Steam Business Review Team's analysis, as well as its recommendation to implement the Natural Gas Conversion Plan. Mr. Willman testified that since 2006, the cost of coal purchased to fuel the Perry K plant has increased by 46 percent, while the delivered price of natural gas to the Perry K plant has decreased by 41 percent. He stated that the decline in natural gas prices and the rise in steam rates have increased competition for the steam utility, which will increase further as more stringent emission regulations cause the Perry K plant to incur significant compliance upgrades for its coal-fired boilers. The Steam Business Review Team consisted of a cross functional internal team charged with determining which environmental compliance scenario and primary fuel source for the Perry K Plant would result in the lowest, long-term delivered steam costs to Petitioner's customers.

Mr. Willman described the various scenarios considered by the Steam Business Review Team. While a base case was included in the scenario analysis for benchmarking purposes, the two relevant scenarios consisted of a coal case that assumes coal remains the primary fuel source for the Perry K Plant and a gas case that is consistent with the Natural Gas Conversion Plan. Mr. Willman stated that each scenario assumes natural gas prices will escalate three percent annually and coal prices will escalate five percent annually, noting the higher escalation rate for coal is based on Citizens Thermal's experience at the Perry K Plant. Mr. Willman testified that the gas case, compared to the coal case scenario of continuing to burn coal at the Perry K Plant, is expected to reduce Petitioner's capital costs by \$15 million for environmental compliance, reduce annual steam costs by approximately \$5 million and reduce average delivered steam costs from 2015 to 2024 by approximately 7.6 percent. Mr. Willman emphasized the gas case scenario will still be a lower cost option than continuing to burn coal, even if future natural gas prices significantly exceed the current cost of delivered gas to the Perry K Plant. He stated the Steam Business Review conducted a natural gas price sensitivity analysis that showed the Natural Gas

Conversion Plan will remain a good business decision so long as the ten-year average gas price for the Perry K Plant from 2015 to 2024 is below \$10 per dekatherm.¹

Mr. Donald E. Wolf, Energy Global Practice Manager with Burns & McDonnell testified on behalf of Petitioner with respect to the Boiler MACT Rule and other environmental regulations impacting the Perry K Plant. Mr. Wolf also described an Industrial Boiler MACT Compliance Study and a separate, higher level Boiler Gas Conversion Study, both of which were completed by Burns & McDonnell.

Mr. Wolf stated that if Citizens Thermal continues to burn coal at the Perry K plant, significant retrofits will be required for its coal-fired boilers that must be completed by a compliance deadline of March 21, 2014.² Mr. Wolf opined that the longer Citizens Thermal waits to commence efforts to comply with the Boiler MACT Rule, the more likely it is that the cost of equipment, construction services and engineering services will increase due to other industrial facilities and electric utilities undergoing compliance efforts competing for the same services. Mr. Wolf also testified that additional environmental regulations beyond the Boiler MACT Rule have the potential to impose significant additional compliance costs on the Perry K plant if it continues to burn coal.

The Industrial Boiler MACT Compliance Study details the impacts and anticipated cost of compliance with the Boiler MACT Rule, if Petitioner were to continue to burn coal at the Perry K Plant. Mr. Wolf testified that if Petitioner intended to continue burning coal, the equipment retrofits required to comply with the Boiler MACT Rule would have a total estimated capital cost of \$19 million and a total estimated increase in annual operation and maintenance costs of \$2.8 million. In contrast, Mr. Wolf testified that, based on the Boiler Gas Conversion Study completed by Burns & McDonnell, the total estimated capital cost for Citizens Thermal to convert two of its coal-fired boilers and two of its oil-fired boilers to burn natural gas would be \$7.47 million. Mr. Wolf expressed his professional opinion that, as the conversion to natural gas can be completed at a much lower capital cost and significantly lessens the impact on the Perry K Plant of pending environmental regulations, the Natural Gas Conversion Plan is a superior option to retrofitting the boilers with air pollution control equipment.

Mr. David C. Kiesel, Director - Plant Engineering for Citizens Energy Group testified regarding the difference between Citizens Thermal's estimate of the cost to comply with the Boiler MACT Rule and the cost estimate prepared by Burns & McDonnell. Mr. Kiesel explained that if Petitioner were to continue burning coal and comply with the Boiler MACT Rule, electrical service and ductwork modifications, as well as bag house and precipitator equipment would be required for the Perry K Plant. Those capital expenditures, which total \$5

¹ Subsequent to the evidentiary hearing, Citizens Thermal submitted Petitioner's Exhibit 4 showing that for the average price of natural gas to equal \$10/dth during the 2015 – 2024 time period, the cost of gas delivered to the Perry K Plant would have to increase by 10.41 percent each and every year between now and 2024.

² Subsequent to the submission of Mr. Wolf's testimony, Citizens Thermal filed Petitioner's Exhibit 2, which is a letter from the U.S. EPA granting Citizens Thermal's request for an extension of the compliance deadline and extending the deadline by which the Perry K plant would be required to achieve compliance with the Boiler MACT Rule to March 21, 2015.

million, are in addition to the \$19 million of capital costs set forth in the Burns & McDonnell report, resulting in an overall capital cost of \$24 million for compliance with the Boiler MACT Rule.

Mr. Kiesel also provided evidence to supplement Burns & McDonnell's cost estimate for implementation of the Natural Gas Conversion Plan. Mr. Kiesel explained that the work involved to complete the Natural Gas Conversion Plan is very similar to work that was performed in 1998, when the Perry K Plant's prior owner converted three coal-fired boilers to burn natural gas and coke oven gas. He stated that the project manager on the 1998 conversion is now an employee of Citizens Thermal and will be managing the Natural Gas Conversion Plan project. Under Mr. Kiesel's direction, that employee developed a detailed estimate of the total capital cost of conversion in the amount of \$9 million. Mr. Kiesel stated that the \$9 million estimate was developed using the high level estimate prepared by Burns & McDonnell and supplementing it with additional capital expenditures Citizens Thermal knows will be necessary based on prior experience from the 1998 conversion project.

Finally, Mr. Kiesel explained that Petitioner plans to utilize two existing distribution mains to transport natural gas to the Perry K Plant. The two lines, which will be capable of delivering up to 2,000 dekatherms per hour of natural gas to the Perry K Plant at 23 psig, are sufficient to run all boilers at full capacity simultaneously and provide sufficient redundancy.

Mr. Korlon L Kilpatrick II, Manager Rates & Business Applications for Citizens Energy Group, testified regarding the proposed Operating Expense Rate Adjustment ("OPERA") mechanism that Petitioner would use to track the operating and maintenance cost savings realized as a result of the Natural Gas Conversion Plan and pass those savings back to customers. Mr. Kilpatrick stated that the proposed OPERA mechanism aligns Petitioner's interests with those of its customers, by allowing Petitioner to pass back operating and maintenance cost savings on a timelier basis than potentially could occur through a base rate case. It also facilitates the timely recovery of Petitioner's financing costs associated with the Natural Gas Conversion Plan, which is necessary for Petitioner to maintain its utility property in a sound physical and financial condition, achieve necessary bond coverage requirements and continue providing safe and reliable steam service to its customer base.

Mr. Kilpatrick testified Petitioner expects to file a base rate case in the first quarter of 2013, using a test year ending September 30, 2012. He stated that debt service costs incurred to finance the Conversion Plan but not included in base rates approved in that case will need to be recovered through the OPERA mechanism. Additionally, Mr. Kilpatrick explained the operating expense structure reflected in the base rates approved in that rate case may be higher than the operating expense structure Petitioner achieves as a result of the Conversion Plan. At the same time, as a result of the fuel switch resulting from the Conversion Plan, customers will experience higher fuel adjustment clause ("FAC") costs due to the higher cost of natural gas compared to coal. Mr. Kilpatrick testified that, absent the OPERA mechanism, customers would be disadvantaged for approximately two years by paying both base rates derived from higher pre-conversion operating costs and higher fuel costs through the quarterly FAC.

Mr. Kilpatrick testified Petitioner plans to use its next base rate case in 2013 to establish a baseline for operational expenses for purposes of administering the OPERA mechanism. He further testified Petitioner expects the OPERA mechanism to have a limited lifespan. Following completion of the Conversion Plan, Petitioner will file another base rate case with a test year reflecting the operating cost savings achieved as a result of the Conversion Plan, as well as any debt service costs for bonds issued to finance the Conversion Plan. Upon order of the Commission in that case, the OPERA mechanism would exist for a brief period to handle a final reconciliation.

Finally, Mr. Kilpatrick described the proposed OPERA mechanism in more detail, including the process for implementing updates to the OPERA mechanism, the computation used to calculate the OPERA rate and a proposed reconciliation process to address over or under recoveries.

5. The Settlement Agreement. Subsequent to the filing of Petitioner's case-in-chief, the Parties entered into a Settlement Agreement, a copy of which is attached to this Order. The key terms are summarized below:

The Parties agree the Natural Gas Conversion Plan, which is defined in the Settlement Agreement as Petitioner's plan to convert Boilers 12, 16, 17 and 18 at its Perry K Plant to be fueled with natural gas, is reasonable and in the public interest, so long as Petitioner's construction costs do not exceed \$9 million, exclusive of Allowance for Funds Used During Construction ("AFUDC"). In addition, nothing in the Settlement Agreement or a Commission Order approving it will be construed as agreement of the OUCC or the Industrial Group that Petitioner's incurrence of construction costs exceeding \$9 million, exclusive of AFUDC, to implement the Conversion Plan is reasonable or in the public interest.

Upon completion of the engineering/design study for the Natural Gas Conversion Plan, Petitioner will provide the OUCC, the Industrial Group and Commission Staff with certain specific project information and a final project estimate. Petitioner will meet with the OUCC, the Industrial Group and Commission Staff periodically during the course of completing the Natural Gas Conversion Plan to discuss its progress and status. The Settlement Agreement contains terms dealing with the possibility of a "material change" or a "material delay" in the cost and timing for completion of the Natural Gas Conversion Plan.

The Parties recommend approval of Petitioner's proposed Standard Contract Rider No. 2 – Operating Expense Rate Adjustment described in Petitioner's prepared case-in-chief testimony, as modified by and subject to stipulations and conditions set forth in the Settlement Agreement.

The Parties further agree that issues related to the manner in which Citizens Thermal will procure natural gas for the Perry K plant are beyond the scope of this proceeding. Petitioner agrees to provide the OUCC and the Industrial Group its post-conversion Perry K plant fuel procurement policy six months in advance of implementing such policy. In the event the Parties cannot reach a consensus, that policy will be addressed in a subsequent FAC sub-docket proceeding. In addition, Citizens Thermal acknowledges that nothing in the Settlement

Agreement relieves it of its continuing obligation to meet the standards of the fuel cost adjustment statute, and the OUCC and the Industrial Group reserve the right to challenge Citizens Thermal's gas procurement practices, including but not limited to, any decision by Citizens Thermal not to engage in competitive bidding for the third party procurement of natural gas.

6. Evidence in Support of the Settlement Agreement.

a. OUCC's Direct Testimony in Support of the Settlement. Mr. Michael D. Eckert, a Senior Utility Analyst in the Electric Division of the OUCC, testified on behalf of the OUCC in this proceeding. Mr. Eckert testified that the OUCC typically does not support operating and maintenance trackers, but it is willing to do so in this case because of its unique circumstances. He stated the Conversion Plan will create savings in operations and maintenance expenses. Also, the OPERA tracker is intended to track net savings only and will not track increases, and should equal zero or be a credit. Mr. Eckert noted the Settlement Agreement limits the type of operating and maintenance expenses to be tracked to only production expenses and the OUCC believes this narrowing of the expenses to be tracked is appropriate. Mr. Eckert then described other changes the Settlement Agreement makes to Petitioner's original OPERA tracker proposal and how base rate case issues are addressed in the Settlement Agreement. Mr. Eckert concluded by stating the OUCC recommends the Commission accept the Settlement Agreement allowing Petitioner to convert its Perry K Plant to burn natural gas and establish the OPERA mechanism.

Mr. Maclean Eke, a Utility Analyst in the Resource Planning and Communication Division of the OUCC, also testified on behalf of the OUCC. Mr. Eke expressed the OUCC's belief that the Settlement Agreement is of benefit to ratepayers because the Conversion Plan will be beneficial to ratepayers and create substantial environmental benefits for the City of Indianapolis. Mr. Eke testified Petitioner has the capability to complete the Conversion Plan, noting the steam utility's prior conversion of coal-fired boilers to natural gas. He noted the OUCC was initially concerned about the unavailability of certain information for the Conversion Plan, but that those concerns had been addressed. Mr. Eke stated that Petitioner's case-in-chief testimony adequately supports a finding that the Conversion Plan is in the public interest, subject to the conditions set forth in the Settlement Agreement. He explained that under the terms of the Settlement Agreement, the Petitioner agreed to provide the Commission, the OUCC, and the Industrial Group with project documents as they become available and will meet with the Commission, the OUCC and the Industrial Group during the course of the Natural Gas Conversion Plan. Mr. Eke testified the OUCC believes Petitioner's \$9 million cost estimate, as set forth in Mr. Kiesel's testimony, is reasonable based on Petitioner's previous experience with the 1998 conversion project. Finally, he stated the OUCC recommends the Commission find the Settlement Agreement is in the public interest and approve it.

b. Petitioner's Supplemental Testimony in Support of the Settlement. In his supplemental testimony, Petitioner's witness Mr. Kilpatrick described how the Settlement Agreement addresses the requests for relief in the Verified Petition. He stated the Settlement Agreement reflects the agreement of the Parties that the Natural Gas Conversion Plan is

reasonable and in the public interest based on Petitioner's evidence and its estimate that the total construction cost of implementing the Conversion Plan will not exceed \$9 million, exclusive of AFUDC. Mr. Kilpatrick noted the Settlement Agreement makes clear that nothing in it or a Commission Order approving it will be construed as agreement of the OUCC or the Industrial Group that Citizens Thermal's incurrence of construction costs exceeding \$9 million, exclusive of AFUDC, would be reasonable or in the public interest. He explained that in the event of a material change to or a material delay of the Conversion Plan (as those terms are defined in the Settlement Agreement), the Parties will meet and consider whether a modification to the Settlement Agreement is needed, which he noted would be subject to the approval of the Commission.

Mr. Kilpatrick then described the Parties' agreement with respect to stipulations and conditions regarding implementation of the OPERA mechanism. He stated the OPERA mechanism will be filed and reconciled semiannually concurrent with two of Petitioner's FAC proceedings, will not track net increases and either will be a credit or \$0.00. Mr. Kilpatrick testified that under the Settlement Agreement, Citizens Thermal agrees to make every reasonable effort to recover debt service costs directly related to the Conversion Plan through base rates. If Petitioner must seek to recover debt service costs through the OPERA mechanism, and those costs exceed operating and maintenance savings being passed back to customers, Petitioner can defer those costs for later recovery in a base rate case or subsequent OPERA mechanism filing.

Mr. Kilpatrick testified he believes the proposed OPERA mechanism is a "tracking provision" within the scope of Ind. Code § 8-1-2-42(a) and also can be approved pursuant to Ind. Code § 8-1-2.5-6. He explained the OPERA mechanism is an integral part of the proposed Natural Gas Conversion Plan, and will enhance or maintain the value of the steam utility's retail energy services as well as its property. Mr. Kilpatrick further testified that the Natural Gas Conversion Plan and OPERA mechanism are focused on enhancing the price, quality, reliability and efficiency of Petitioner's steam utility services and that the considerations set forth in Ind. Code § 8-1-2.5-5 weigh in favor of approving the OPERA mechanism. Mr. Kilpatrick also discussed provisions in the Settlement Agreement addressing Petitioner's next base rate case and its agreement not to seek a return on a coal-fired boiler that Petitioner does not have immediate plans to convert to natural gas.

Finally, Mr. Kilpatrick expressed his belief that the Settlement Agreement will foster transparency and collaboration among the Parties and Commission Staff. He pointed to provisions in the Settlement Agreement that memorialize Citizens Thermal's commitment to keep the OUCC, the Industrial Group and Commission Staff apprised of the progress of completing the Conversion Plan and meet with the OUCC, the Industrial Group and Commission Staff as needed. Mr. Kilpatrick concluded his supplemental testimony by recommending the Commission approve the Settlement Agreement.

7. Commission Discussion and Findings. The Commission has noted in prior orders that Indiana law favors settlement as a means of resolving proceedings before it. *Indianapolis Power & Light Co.*, Cause No. 39938, at 7 (IURC Aug. 24, 1995); *see also Commission Investigation of Northern Ind. Pub. Serv. Co.*, Cause No. 41746, p. 23 (IURC Sep.

23, 2002). The policy favoring settlements also has been emphasized by the Indiana Supreme Court. *See, e.g., Mendenhall v. Skinner & Broadbent Co.*, 728 N.E.2d 140, 145 (Ind. 2000) (“The policy of the law generally is to discourage litigation and encourage negotiation and settlement of disputes.”). This policy also extends to public utility proceedings. *PSI Energy, Inc.*, Cause No. 42718, at 23 (IURC May 24, 2006).

Nevertheless, pursuant to the Commission’s procedural rules and prior determinations, we will not approve a settlement agreement unless it is supported by probative evidence. 170 IAC 1-1.1-17. Settlements presented to the Commission are not ordinary contracts between private parties. *United States Gypsum, Inc. v. Indiana Gas Co.*, 735 N.E.2d 790, 803 (Ind. 2000). When the Commission approves a settlement, that settlement “loses its status as a strictly private contract and takes on a public interest gloss.” *Id.* (quoting *Citizens Action Coalition v. PSI Energy*, 664 N.E.2d 401,406 (Ind. Ct. App. 1996)). Thus, the Commission “may not accept a settlement merely because the private parties are satisfied; rather [the Commission] must consider whether the public interest will be served by accepting the settlement.” *Citizens Action Coalition*, 664 N.E.2d at 406. Further, any Commission decision, ruling, or order, including the approval of a settlement, must be supported by specific findings of fact and sufficient evidence. *United States Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coalition v. Public Service Co.*, 582 N.E.2d 330, 331 (Ind. 1991)). Therefore, before the Commission can approve the Settlement Agreement, we must determine whether the evidence in this Cause sufficiently supports the conclusions that the Settlement Agreement is reasonable and serves the public interest.

It is an undeniable fact that the Natural Gas Conversion Plan will reduce the fuel diversity of Petitioner’s supply portfolio. The testimony makes clear that retaining the present diversity could only be maintained at a cost substantially greater than that of the Conversion Plan. Accordingly, it is reasonably likely that the Conversion Plan will create long-term benefits for Petitioner, its customers and the community, by supporting the competitiveness of Petitioner’s steam business. Further, the Conversion Plan is designed, and reasonably likely, to enhance the safety and reliability of Petitioner’s operations and create substantial environmental benefits for the City of Indianapolis. Based on the evidence presented, the Commission finds the Natural Gas Conversion Plan is reasonable and in the public interest, subject to the terms of the Settlement Agreement as modified below.

The Settlement Agreement includes terms which call for Citizens Thermal to provide information to, and meet with, the OUCC, the Industrial Group and Commission Staff. Although the Parties included these terms in an effort to foster transparency and collaboration, we find the desire for transparency would be better served by addressing the information in Petitioner’s quarterly FAC proceedings. Accordingly, we find that Petitioner shall include testimony regarding the progress and status of the Natural Gas Conversion Plan in each quarterly FAC proceeding until it has been completed.³

We also note that, in accordance with Paragraph 1 of the Settlement Agreement, nothing in this Order will be construed as agreement of the OUCC or the Industrial Group, or as a finding

³ Our conclusion does not preclude Citizens Thermal from providing information to, or meeting with, the OUCC or the Industrial Group as contemplated by the Settlement Agreement.

by the Commission, that Petitioner's incurrence of construction costs exceeding \$9 million, exclusive of AFUDC, is reasonable or in the public interest. We further find that Paragraph 3 of the Settlement Agreement is an appropriate means of addressing any material changes to, or material delays of, the implementation of the Conversion Plan.

We also find the OPERA mechanism, subject to the stipulations and conditions set forth in the Settlement Agreement, is reasonable and should be approved pursuant to Ind. Code § 8-1-2-42(a). The OPERA mechanism will track the operating and maintenance cost savings realized as a result of the Natural Gas Conversion Plan and provide those cost savings to customers before those costs savings would otherwise be available to customers through a base rate case. The Commission, therefore, finds that Petitioner is authorized to implement the OPERA mechanism, subject to the stipulations and conditions set forth in the Settlement Agreement.

While the Parties agree that issues related to the manner in which Citizens Thermal will procure natural gas for the Perry K plant are beyond the scope of this proceeding, it is clear that the Conversion Plan will result in a greater exposure to fluctuations in the price of natural gas. The terms of the Settlement Agreement establish a process for a future review of Petitioner's Perry K fuel procurement policy. Consequently, the Commission will review the reasonableness of Petitioner's proposed fuel procurement policy and its compliance with any applicable affiliate guidelines in a future proceeding.

Finally, the Parties agreed that the Settlement Agreement may not be used as precedent in any other proceeding or for any purpose other than the resolution of the issues in this Cause, except to the extent necessary to implement or enforce the terms of that agreement. Consequently, we find that future citation to this Order should be construed in a manner consistent with our finding in the Commission's Order approving a settlement agreement in *Richmond Power & Light*, Cause No. 40434 (IURC March 19, 1997).

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

1. The Settlement Agreement filed in this Cause, and as modified herein, is approved.
2. Citizens Thermal is authorized to implement the Natural Gas Conversion Plan, subject to the terms and conditions in the Settlement Agreement as modified herein.
3. The proposed OPERA mechanism, subject to the terms and conditions in the Settlement Agreement, is approved pursuant to Ind. Code § 8-1-2-42(a).
4. In accordance with Ind. Code § 8-1-2-70, within twenty (20) days from the date of this Order, Citizens Thermal shall pay to the Secretary of the Commission the following itemized charges, as well as any additional costs that were incurred in connection with this Cause:

Commission Charges:	\$ 2,386.01
OUCG Charges:	\$ 7,843.48
Legal Advertising Charges:	\$ 122.36
TOTAL	\$10,351.85

5. This order shall be effective on and after the date of its approval.

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

APPROVED:

AUG 08 2012

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



Brenda A. Howe

Secretary to the Commission

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF THE BOARD OF)
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 ENERGY SERVICES, D/B/A CITIZENS)
 THERMAL, FOR (A) AUTHORITY PURSUANT)
 TO INDIANA CODE SECTION 8-1-2-42(A), AND)
 TO THE EXTENT NECESSARY AS AN)
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CAUSE NO. 44149

SETTLEMENT AGREEMENT

This Settlement Agreement is made as of the 4th day of June, 2012, and entered into by and among the Board of Directors for Utilities of the Department of Public Utilities of the City of Indianapolis d/b/a Citizens Thermal (“Petitioner” or “Citizens”), the Indiana Office of Utility Consumer Counselor (the “OUCC”) and Citizens Industrial Group (“Industrial Group”) (Citizens, the OUCC and the Industrial Group each a “Party” and collectively the “Parties”).

WHEREAS, on January 18, 2012, in Cause No. 44149, Citizens filed its Verified Petition requesting certain approvals from the Indiana Utility Regulatory Commission (the

“Commission”) related to its planned conversion of coal-fired and oil-fired boilers at the Perry K steam production plant to burn natural gas;

WHEREAS, Citizens filed with the Commission its prepared case-in-chief testimony and exhibits supporting the relief requested in its Verified Petition on February 28, 2012;

WHEREAS, the Parties have engaged in communications and exchanged information relating to the relief requested by Petitioner in the Verified Petition and other matters; and

WHEREAS, as a result of such communications and negotiations, the Parties agree that the terms and conditions set forth in this Settlement Agreement represent a fair, just and reasonable resolution of the issues raised in this Cause.

NOW THEREFORE, subject to the Commission's approval of this Settlement Agreement in its entirety without modification or imposition of any other term or condition that may be unacceptable to a Party, the Parties agree as follows:

1. The Parties agree that Citizens' plan to convert Boilers 12, 16, 17 and 18 at its Perry K steam production plant to be fueled with natural gas (the “Natural Gas Conversion Plan” or “Plan”) is reasonable and in the public interest, based on Citizens' prepared case-in-chief testimony. In its case-in-chief testimony, Citizens estimates the total construction cost of implementing the Natural Gas Conversion Plan should not exceed \$9 million, exclusive of Allowance for Funds Used During Construction (“AFUDC”). Nothing in this Settlement Agreement or a Commission Order approving it will be construed as agreement of the OUCC or Industrial Group that Citizens' incurrence of construction costs exceeding \$9 million, exclusive of AFUDC, to implement the Natural Gas Conversion Plan is reasonable or in the public interest.

2. Upon completion of its engineering/design study for the Natural Gas Conversion Plan, Citizens agrees to provide the OUCC, the Industrial Group and Commission Staff

engineering drawings, proposals, bid documents and standard specifications for coal-fired and oil-fired boiler conversion projects and a final project estimate. In addition, Citizens shall provide the OUCC, the Industrial Group and Commission Staff any and all requests for proposals or requests for quotations for the retrofit gas burners for the existing boilers.

3. Citizens agrees to meet with the OUCC, the Industrial Group and Commission Staff periodically during the course of completing the Natural Gas Conversion Plan to discuss its progress and status. To the extent the Plan materially changes or there is a material delay in completing the Plan, the Parties agree to promptly meet for purposes of considering a modification to this Settlement Agreement. A "material change," for purposes of this paragraph, includes an increase in the total construction cost of implementing the Plan, exclusive of AFUDC, above \$9.0 million or a decision to convert fewer or different boilers than contemplated in Citizens' case-in-chief testimony. A "material delay," for purposes of this paragraph, is six months longer than contemplated in Citizen's case-in-chief testimony.

4. Subject to the stipulations and conditions set forth immediately below in this Paragraph 4, the Parties recommend the Commission authorize Citizens to implement the proposed Standard Contract Rider No. 2 – Operating Expense Rate Adjustment (the "OPERA Mechanism"), as described in Petitioner's prepared case-in-chief testimony and modified by this Agreement.

a. Citizens agrees to make every reasonable effort to recover debt service costs directly related to the Plan through base rates. However, if after reasonable efforts to do so, Citizens is unable to recover such costs through base rates, subject to Paragraph 4.b below, Citizens may seek through the OPERA Mechanism recovery of debt service payments that are not being recovered through base rates and are incurred to fund the

costs of implementing the Natural Gas Conversion Plan, so long as the total construction cost of implementing the Natural Gas Conversion Plan has not exceeded \$9 million, exclusive of AFUDC. The OPERA Mechanism cannot be used to recover debt service costs that are not specifically and directly related to the Plan.

b. The Parties agree that the OPERA Mechanism is intended to track net savings related to the Natural Gas Conversion Plan. Net savings are defined as the difference between costs incurred in the operation of the Perry K plant (production related costs only) and any reductions of those costs as a result of the Natural Gas Conversion Plan. The OPERA Mechanism will not track net increases and should equal zero or be a credit. To the extent debt service payments Citizens seeks to recover through the OPERA Mechanism would exceed O&M savings being passed back to customers through the OPERA Mechanism during a particular period, such as the construction period, those costs cannot be recovered through the OPERA Mechanism for that period but can be deferred by Citizens for later recovery in a base rate case or a subsequent semi-annual OPERA Mechanism filing.

c. The Parties agree that the OPERA Mechanism will be (i) filed and reconciled semiannually; (ii) filed simultaneously with Citizens Thermal's FAC filings; and (iii) designed to have OPERA Mechanism and FAC Orders issued at or near the same time.

d. The Parties agree to work collaboratively to see that the net benefits and costs of the Natural Gas Conversion Plan are reflected in base rates at the earliest reasonable opportunity. To that end, Citizens Thermal agrees to file a base rate case with a test year ending 12 to 16 months following completion of the Natural Gas Conversion Plan.

5. Upon completion of the Natural Gas Conversion Plan, Citizens Thermal agrees it will not seek a return on Boiler 15 until such time as that boiler is used and useful.

6. Except as addressed in this Paragraph, the Parties agree that issues related to the manner in which Citizens will procure natural gas for the Perry K steam production plant are beyond the scope of this proceeding. Citizens agrees to circulate a draft policy addressing post-conversion fuel procurement for the Perry K production plant (the "Fuel Procurement Policy") to all Parties for comment no later than six months prior to the proposed implementation of the policy. Upon request, Citizens agrees to meet with the OUCC and Industrial Group to discuss the Fuel Procurement Policy and the proposed timing of its implementation. In the event that the Parties cannot reach a consensus on the purpose, procedure, and terms of such policy, Citizens agrees to file in an FAC proceeding prior to the proposed implementation date of the Fuel Procurement Policy testimony supporting its planned fuel procurement practices and, if requested by the OUCC or Industrial Group, request a subdocket to address the Fuel Procurement Policy. The Parties expressly acknowledge that all interested persons reserve their right to object to, and oppose, any relief Citizens requests in such proceeding. Further, Citizens acknowledges that nothing in this Agreement relieves it of its continuing obligation to meet the standards of the fuel cost adjustment statute. The OUCC and Industrial Group reserve the right to challenge Citizens' gas procurement practices, including, but not limited to, any decision by Citizens not to engage in competitive bidding for the third party procurement of natural gas.

7. Citizens and the OUCC will offer supporting testimony for the approval of this Settlement Agreement in this proceeding and will request that the Commission issue a Final Order promptly accepting and approving the same in accordance with its terms. All evidence supporting the Settlement Agreement, as well as a form of Proposed Order, shall be reviewed

and agreed upon by the Parties prior to submission to the Commission. The Parties agree that the evidence of record previously submitted in this Cause, along with the evidence to be submitted in support of this Settlement Agreement, constitute substantial evidence to support this Settlement Agreement and provide a sufficient evidentiary basis upon which the Commission can make any findings of fact and conclusions of law necessary for the approval of this Settlement Agreement as filed.

8. Neither the making of this Settlement Agreement nor any of its provisions shall constitute in any respect an admission by either Party in this or any other litigation or proceeding. Neither the making of this Settlement Agreement, nor the provisions thereof, nor the entry by the Commission of a Final Order approving this Settlement Agreement, shall establish any principles or legal precedent applicable to Commission proceedings other than those resolved herein.

9. This Settlement Agreement shall not constitute nor be cited as precedent by any person or deemed an admission by either Party in any other proceeding except as necessary to enforce its terms before the Commission, or any tribunal of competent jurisdiction. This Settlement Agreement is solely the result of compromise in the settlement process and, except as provided herein, is without prejudice to and shall not constitute a waiver of any position that either Party may take with respect to any or all of the issues resolved herein in any future regulatory or other proceedings.

10. The undersigned have represented and agreed that they are fully authorized to execute this Settlement Agreement on behalf of their designated clients, and their successors and assigns, who will be bound thereby, subject to the agreement of the Parties on the provisions contained herein.

11. The communications and discussions during the negotiations and conferences attended only by the Parties have been conducted based on the explicit understanding that said communications and discussions are or relate to offers of settlement and therefore are privileged. All prior drafts of this Settlement Agreement and any settlement proposals and counterproposals also are or relate to offers of settlement and are privileged.

12. This Settlement Agreement is conditioned upon and subject to Commission acceptance and approval of its terms in their entirety, without any change or condition that is unacceptable to a Party.

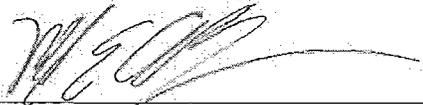
[Signature page follows]

[Signature page to the June 2012 Settlement Agreement in Cause No. 44149]

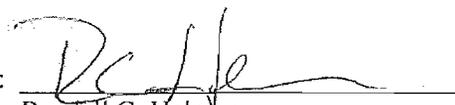
The undersigned have represented and agreed that they are fully authorized to execute this Settlement Agreement on behalf of the designated parties who will be bound thereby.

The Board of Directors for Utilities of the
Department of Public Utilities of the City of
Indianapolis, as Trustee of a Public Charitable
Trust, d/b/a Citizens Thermal

Indiana Office of Utility Consumer Counselor

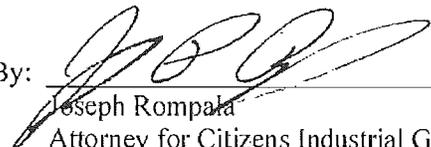
By: 

Michael E. Allen
Associate General Counsel

By: 

Randall C. Helmen
Chief Deputy Consumer Counselor

Citizens Industrial Group

By: 

Joseph Rompala
Attorney for Citizens Industrial Group