

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

SUBMISSION OF SUPPLEMENTAL TESTIMONY

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 (“Citizens” or “Petitioner”), respectfully submits the Verified Supplemental Testimony of Korlon L. Kilpatrick II in support of the Settlement Agreement entered into by Petitioner, the Indiana Office of Utility Consumer Counselor and Citizens Industrial Group.

Respectfully submitted,



Michael E. Allen
Attorney for Petitioner

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been served upon the following counsel of record in the captioned proceeding by U.S. mail and electronic mail on June 7, 2012.

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BEFORE THE
INDIANA UTILITY REGULATORY COMMISSION

**VERIFIED PETITION OF THE BOARD OF)
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VERIFIED SUPPLEMENTAL TESTIMONY
of
KORLON L. KILPATRICK II

On Behalf of
Citizens Thermal

Petitioner's Exhibit KKK-S

INTRODUCTION AND BACKGROUND

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Korlon L. Kilpatrick II. My business address is 2020 North Meridian
3 Street, Indianapolis, Indiana.

4 **Q. ARE YOU THE SAME KORLON KILPATRICK WHO PREVIOUSLY**
5 **TESTIFIED ON BEHALF OF CITIZENS THERMAL IN THIS**
6 **PROCEEDING?**

7 A. Yes, I am.

8 **Q. WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL TESTIMONY?**

9 A. My supplemental testimony supports the Settlement Agreement entered into by
10 Citizens Thermal, the Petitioner in this proceeding, the Indiana Office of Utility
11 Consumer Counselor (the "Public") and the Citizens Industrial Group (the
12 "Industrial Group") (Citizens Thermal, the Public and the Industrial Group
13 referred to collectively herein as the "Settling Parties"). While the Settlement
14 Agreement is fairly straightforward and speaks for itself, I will generally describe
15 its key provisions.

16 **Q. PLEASE IDENTIFY PETITIONER'S EXHIBIT KLK-S1.**

17 A. Petitioner's Exhibit KLK-S1 is a true and correct copy of the Settlement
18 Agreement in this Cause.

THE SETTLEMENT AGREEMENT

19 **Q. PLEASE GENERALLY DESCRIBE THE INITIAL REQUESTS FOR**
20 **RELIEF IN THE PETITION IN THIS CAUSE.**

1 A. The Verified Petition contains two requests for relief. First, Petitioner requested
2 the Commission find that completion of a plan to convert certain boilers at its
3 Perry K steam production plant to be fueled with natural gas is reasonable and in
4 the public interest. Second, Petitioner requested approval to implement a rate
5 adjustment tracking provision that will be used (1) to track the operating and
6 maintenance cost savings realized as a result of the conversion plan and pass back
7 those savings to customers; and (2) to track financing costs incurred to complete
8 the conversion, to the extent not recovered through base rates, and to recover
9 those costs from customers. The Settlement Agreement memorializes the Settling
10 Parties agreements regarding the details of those two requests for relief.

11 **Q. PLEASE DESCRIBE HOW THE SETTLEMENT AGREEMENT**
12 **ADDRESSES THE FIRST REQUEST FOR RELIEF.**

13 A. Paragraph 1 primarily addresses the first request for relief. In that paragraph, the
14 Settling Parties agree that Citizens Thermal's plan to convert Boilers 12, 16, 17
15 and 18 at its Perry K steam production plant (defined as the "Natural Gas
16 Conversion Plan" in the Settlement Agreement) is reasonable and in the public
17 interest, based on Citizens Thermal's evidence and its estimate that the total
18 construction cost of implementing the Natural Gas Conversion Plan does not
19 exceed \$9 million, exclusive of Allowance for Funds Used During Construction
20 ("AFUDC"). The Settlement Agreement makes clear that nothing in it or a
21 Commission Order approving it will be construed as agreement of the OUCC or
22 Industrial Group that Citizens' incurrence of construction costs exceeding \$9

1 million, exclusive of AFUDC, to implement the Natural Gas Conversion Plan is
2 reasonable or in the public interest.

3 **Q. WHAT HAPPENS IF THE CONSTRUCTION COST TO IMPLEMENT**
4 **THE NATURAL GAS CONVERSION PLAN DOES EXCEED \$9**
5 **MILLION OR THERE IS SOME OTHER MATERIAL CHANGE TO THE**
6 **PLAN?**

7 A. In the event of a “material change” to the plan or a “material delay” in
8 implementing the plan (as those terms are defined in the Settlement Agreement
9 pursuant to Paragraph 3), the Settling Parties agree to meet and consider whether
10 a modification to the Settlement Agreement is necessary. Of course, any such
11 modification would be subject to the approval of the Commission.

12 **Q. PLEASE DESCRIBE HOW THE SETTLEMENT AGREEMENT**
13 **ADDRESSES THE IMPLEMENTATION OF THE REQUESTED**
14 **TRACKING PROVISION.**

15 A. Paragraph 4 of the Settlement Agreement memorializes the Settling Parties agreed
16 to stipulations and conditions regarding Petitioner's implementation of the
17 requested tracking provision.

18 **Q. PLEASE DESCRIBE THOSE STIPULATIONS AND CONDITIONS.**

19 A. Petitioner will file and reconcile the Operating Expense Rate Adjustment
20 (“OPERA”) mechanism semiannually. These filings will be concurrent with two
21 of the Petitioner's Fuel Adjustment Clause (FAC) filings. Furthermore, Petitioner
22 agrees to make every reasonable effort to recover debt service costs directly

1 related to the Natural Gas Conversion Plan through base rates. If the Petitioner is
2 unable to recover these costs through base rates, Petitioner may seek recovery of
3 said costs through the OPERA mechanism. The OPERA mechanism, however,
4 will not track net increases and it will either be a credit or \$0.00. If Petitioner
5 must seek to recover debt service costs through the tracker, and those costs exceed
6 O&M savings being passed back to customers, Petitioner can defer these costs for
7 later recovery in a base rate case or subsequent OPERA filing.

8 **Q. THE VERIFIED PETITION REQUESTS APPROVAL OF THE OPERA**
9 **MECHANISM “PURSUANT TO INDIANA CODE SECTION 8-1-2-42(A),**
10 **AND TO THE EXTENT NECESSARY, INDIANA CODE SECTION 8-1-**
11 **2.5-6.” DO YOU BELIEVE THE OPERA MECHANISM, AS WELL AS**
12 **THE STIPULATIONS AND CONDITIONS YOU HAVE JUST**
13 **DESCRIBED, MEET THE REQUIREMENTS OF THOSE STATUTES?**

14 A. Yes. I believe the OPERA mechanism is a “tracking provision” within the scope
15 of Indiana Code Section 8-1-2-42(a). To the extent necessary, I also believe the
16 OPERA mechanism can be approved pursuant to Indiana Code 8-1-2.5-6. The
17 OPERA mechanism is an integral part of the proposed Natural Gas Conversion
18 Plan, and Petitioner’s case-in-chief testimony demonstrates that the Natural Gas
19 Conversion Plan in conjunction with the OPERA mechanism will enhance or
20 maintain the value of the steam utility’s retail energy services as well as its
21 property. The conversion plan and OPERA mechanism are focused on enhancing
22 the price, quality, reliability and efficiency of the steam utility services Citizens

1 Thermal provides. Furthermore, I believe our case-in-chief testimony
2 demonstrates that the considerations set forth in Indiana Code Section 8-1-2.5-5,
3 including the operating conditions, competitive forces and environmental
4 regulations Petitioner faces, weigh in favor of approving the OPERA mechanism.

5 **Q. ARE THERE OTHER PROVISIONS WITHIN PARAGRAPH 4 THAT**
6 **YOU WOULD LIKE TO HIGHLIGHT?**

7 A. Yes. In order to capture the benefits of the Natural Gas Conversion Plan in base
8 rates at the earliest reasonable opportunity, Petitioner agrees to file a base rate
9 case with a test year ending 12 to 16 months following the completion of the
10 conversion.

11 **Q. PLEASE EXPLAIN PARAGRAPH 5 OF THE SETTLEMENT**
12 **AGREEMENT.**

13 A. As Mr. Braun noted in his case-in-chief testimony, the Natural Gas Conversion
14 Plan does not contemplate immediate conversion of the Perry K plant's Boiler 15,
15 which is a coal-fired boiler. Consequently, if Petitioner completely eliminates the
16 use of coal at the Perry K plant upon completion of the Natural Gas Conversion
17 Plan (as defined in the Settlement Agreement), it will cease utilizing Boiler 15
18 until such time as that boiler is converted to burn natural gas or another fuel.
19 Paragraph 5 memorializes Citizens Thermal's agreement that, during any such
20 period of time, it will not elect, pursuant to Indiana Code Section 8-1.5-3-8(f), to
21 include in its revenue requirement a return on Boiler 15. Citizens Thermal's rates
22 and charges currently do not reflect a return on any of its utility plant.

CONCLUSION

1 **Q. MR. KILPATRICK, DO YOU BELIEVE APPROVAL OF THE**
2 **SETTLEMENT AGREEMENT IS IN THE PUBLIC INTEREST?**

3 A. Yes, I do. It comprehensively addresses issues raised by the Natural Gas
4 Conversion Plan and presents a reasonable resolution of those issues in a manner
5 that satisfies the interests of Petitioner, the Public and the Industrial Group.
6 Moreover, I believe the Settlement Agreement will foster transparency and
7 collaboration among the Settling Parties, as well as with Commission Staff.
8 Various provisions in the Settlement Agreement, such as Paragraphs 2, 3 and 6,
9 memorialize Citizens Thermal's commitment to keep the Settling Parties and
10 Commission apprised of the progress of completing the Natural Gas Conversion
11 Plan and to meet with the OUCC, Industrial Group and Commission Staff as
12 needed.

13 **Q. IN CONCLUSION, WHAT DO YOU RECOMMEND TO THE**
14 **COMMISSION?**

15 A. I recommend that the Commission approve the Settlement Agreement.

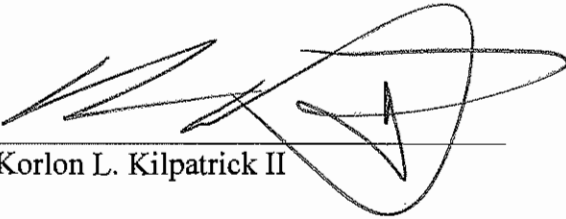
16 **Q. DOES THIS CONCLUDE YOUR SUPPLEMENTAL TESTIMONY IN**
17 **THIS PROCEEDING?**

18 A. Yes.

Verified Supplemental Testimony of Korlon L. Kilpatrick II
Petitioner's Exhibit KKK-S
Cause No. 44149

VERIFICATION

I, Korlon L. Kilpatrick, II, affirm under penalties of perjury that the foregoing testimony is true to the best of my knowledge, information and belief.


Korlon L. Kilpatrick II

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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

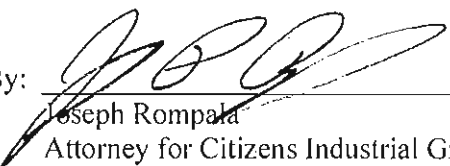
By: 

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