ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF INDIANA GAS COMPANY, INC. D/B/A VECTREN ENERGY DELIVERY OF INDIANA, INC. FOR APPROVAL OF TWO SPECIAL GAS SERVICE CONTRACTS WITH STEEL DYNAMICS, INC. AND PROCEDURES TO PROTECT THE CONFIDENTIALITY OF PORTIONS OF THE CONTRACT	)	**CAUSE NO. 44719**
	)	**APPROVED:** APR 13 2016

ORDER OF THE COMMISSION

Presiding Officers:
Carolene Mays-Medley, Vice Chair
Marya E. Jones, Administrative Law Judge

On November 30, 2015, Indiana Gas Company, Inc. d/b/a Vectren Energy Delivery of Indiana, Inc. ("Vectren North" or "Petitioner") filed its Verified Petition seeking approval from the Indiana Utility Regulatory Commission ("Commission") for two Special Gas Service Contracts ("Contracts") with Steel Dynamics, Inc. ("SDI"). The Contracts provide for the provision of local gas transportation service at SDI's Jeffersonville, Indiana facility (the "Jeffersonville Facility"), and at SDI's Pittsboro, Indiana facility (the "Pittsboro Facility), (collectively, the "Facilities"). Petitioner filed public, redacted versions of the Contracts as exhibits to its Verified Petition.

On November 30, 2015, Petitioner also filed the redacted version of the testimony of Thomas L. Bailey, Director of Industrial Sales & Economic Development for Vectren Utility Holdings, Inc. ("VUHI"). Pursuant to Ind. Code ch. 5-14-3, Petitioner sought the establishment of confidential procedures to protect trade secrets consisting of pricing provisions, service levels, and other negotiated rights of SDI (the "Confidential Provisions") included within the Contracts, as well as portions of Petitioner's case-in-chief describing those provisions. In a Docket Entry dated December 11, 2015, the Presiding Officers granted Petitioner's request for protection of Confidential Information, finding the information to be confidential on a preliminary basis and adopting certain procedural safeguards pending a final determination of confidentiality. Petitioner filed its Confidential Information under seal on December 14, 2015.

On January 25, 2016, the Indiana Office of Utility Consumer Counselor ("OUCC") filed the testimony of Farheen Ahmed, Utility Analyst in the OUCC's Natural Gas Division. On February 11, 2016, Petitioner filed notice of its intent not to file rebuttal testimony in this Cause.

The Commission convened an evidentiary hearing at 1:30 p.m. on March 10, 2016, in Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. At the hearing, Vectren North and the OUCC offered their respective prefiled testimony and exhibits, which were admitted into the record without objection. No members of the general public were present or sought to testify.

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

1. **Notice and Jurisdiction.** Due, legal, and timely notice of the evidentiary hearing in this Cause was given and published by the Commission as required by law. Petitioner is a "public utility" and a "gas utility" as defined by Ind. Code §§ 8-1-2-1(a) and 8-1-2-87, respectively. Pursuant to Ind. Code §§ 8-1-2-24 and 8-1-2-25, the Commission has jurisdiction over the approval of contracts for gas transportation services. Accordingly, the Commission has jurisdiction over the Petitioner and the subject matter of this proceeding.

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 pursuant to indeterminate permits, franchises, and necessity certificates previously issued by the Commission. Vectren North owns, operates, manages, and controls, among other things, plant, property, equipment, and facilities that are used and useful for the production, transmission, distribution, and furnishing of natural gas service to approximately 567,000 ultimate consumers in 49 counties in central and southern Indiana. Petitioner is a wholly-owned subsidiary of VUHI, which is a wholly-owned subsidiary of Vectren Corporation.

3. **Relief Requested.** Petitioner requests Commission approval of the proposed Contracts between Petitioner and SDI for certain gas transportation services between Vectren North and SDI. Petitioner requests that the Commission find that the Confidential Information involved in this proceeding is exempt from public disclosure pursuant to Ind. Code § 8-1-2-29 and Ind. Code ch. 5-14-3.

4. **Evidence Presented.**

A. **Petitioner's Direct Evidence**. Mr. Bailey testified that the proposed Contracts resulted from good faith, arms-length negotiations between Vectren North and SDI for service at SDI's Facilities. He stated that the proposed Contracts are beneficial because they allow SDI to position itself for long term viability in Indiana while maintaining competitive energy costs that promote future economic development investments and increased production schedules at SDI's Facilities. He testified that the Contracts support SDI's efforts to maintain a local and skilled workforce in Jeffersonville and Pittsboro, and also assist Vectren North's ability to retain a large industrial customer for a secure period of time.

Mr. Bailey testified that Vectren North is seeking approval of the Contracts pursuant to its Rate Schedule No. 270 ("Rate 270"). Mr. Bailey stated that SDI has been a Rate 270 natural gas customer since the 1990s. He explained that Rate 270 is designed to enable Vectren North to preserve and/or attract load on its system. He stated that absent the provision of gas service pursuant to Rate 270, Vectren North, would likely lose service to another gas service provider.

Mr. Bailey stated that SDI is one of Vectren North's largest natural gas customers and not only remains consistent in its production patterns, but recently expanded production at the Pittsboro Facility. He testified that because of the Pittsboro Facility's proximity to Panhandle Eastern Pipeline Company, SDI has a legitimate economic opportunity to bypass Vectren North's

system. He noted that the potential loss of the Pittsboro Facility would not benefit other ratepayers and would lead to an increase in fixed cost recovery from Vectren North's remaining customer base. Mr. Bailey explained that, while the Jeffersonville Facility does not pose a bypass threat, it is a key facility in SDI's production footprint and the Contracts' competitive rate structure will assist SDI's potential future growth and sustainability in Indiana. Mr. Bailey testified that Vectren North and SDI considered these points and their longstanding relationship when they agreed to negotiate new Contracts for natural gas service.

Mr. Bailey explained that the Contracts fulfill the criteria under Rate 270, which includes the following: 1) the customer must have a written contract with Vectren North specifying the terms and conditions of the service to be provided; 2) the written contract between Vectren North and the customer must be filed with the Commission for its approval; 3) the rates and charges for gas service provided under Rate 270 must be specified in the written contract; 4) the customer must agree to a written contract with a term of at least five years; 5) the customer must agree not to directly or indirectly bypass Vectren North's system, or displace or substantially reduce Vectren North's provision through the use of an energy service other than natural gas; 6) the service to be provided must be necessary to enable Vectren North to preserve or attract the load at one or more of the premises to be served pursuant to the written contract; 7) the contract between Vectren North and the customer must be the result of arm's length negotiation; and 8) the written contract between Vectren North and the customer must result in a direct benefit to Vectren North's other customers. Mr. Bailey testified that the initial term of the proposed Contracts is a ten-year period beginning on the first day of the month following the month the Commission approves the Contracts. He stated that at the end of the initial term, the Contracts shall remain in effect unless either of the parties provides 12-months prior written notice. He noted that if notice is not provided, the Contracts remain in effect following the initial term until the last day of the month which is at least 12 months after the written notice provided by either party that the Contracts shall be terminated.

Mr. Bailey testified that, pursuant to the Contracts, Vectren North is to provide SDI with firm natural gas transportation service specific to SDI's daily pipeline nominations, with such nominations being delivered to Vectren North's city-gate operation system as specified in Vectren North's tariff. He stated that SDI may obtain alternate city-gate allocations through an Alternate Delivery Plan, which must be submitted in advance by SDI and approved by Petitioner prior to implementation. Mr. Bailey testified that SDI will pay Vectren North for the delivery service in accordance with the provisions of Rate Schedule No. 260, as the same may be in effect from time to time, including any successor rate schedule, with the exception that throughput charges and Vectren North's schedule Appendix K will be charged Rate 270, as specifically provided on page 2 of each redacted Contract in Petitioner's Exhibit Nos. 1 and 2. He stated that the Contracts provide for a distribution charge to be assessed by Vectren North and paid by SDI on a monthly basis for all quantities of gas delivered to SDI's Facilities. Mr. Bailey testified that the distribution charge assessed by Vectren North to SDI shall be equal to the distribution charges set forth in Rate 260, or its successor rate schedule, in effect at the time of consumption, as adjusted at the Facilities. He noted that those charges are subject to change in the future if the Commission approves a change to Rate 260 or its successor rate schedule. He testified that SDI will, however, still receive the same discount on those revised rates. Mr. Bailey explained that all gas service provided by Vectren North, and received by SDI, pursuant to the Contracts, will also be subject to the balancing provisions contained in Appendix E to the tariff as a transportation customer receiving service under Rate 260.

Mr. Bailey stated that the rates established in the Contracts are sufficient to cover the costs of the existing meters and service lines currently used to provide gas service to SDI and will also provide a contribution to the recovery of Vectren North's fixed costs. He stated that Vectren North's existing and future gas customers will benefit from the continued contributions made by SDI to those fixed costs that would otherwise be paid by such customers. He also noted that the Contracts will not alter any of Vectren North's other existing rates or contracts, and therefore, will not adversely impact the adequacy or reliability of service provided to other Vectren North customers. Mr. Bailey testified that the rates contained in the Contracts are reasonable and just, practical and advantageous to SDI and Vectren North, are in the public interest, and are not inconsistent with the purpose of Indiana utility regulation.

Mr. Bailey explained that Vectren North's confidentiality request relates to the Confidential Provisions of the Contracts comprised of the following: (1) the throughput charge(s) assessed to SDI; and (2) balancing provisions, as well as the calculations and analyses supporting his statements that the rates established in the Contracts are sufficient to cover the costs of existing meters and service lines and to provide a contribution to the recovery of Vectren North's fixed costs. Mr. Bailey testified that he provided a confidential schedule showing his calculations supporting this conclusion in Petitioner's Exhibit 3-C, Attachment TLB-1. Mr. Bailey stated that the Confidential Provisions of the proposed Contracts also contain service levels, pricing provisions and other confidential terms that were negotiated between SDI and Vectren North. He testified that because Vectren North is currently negotiating other economic development and business retention contracts, the Confidential Provisions, if generally known or readily ascertainable by other parties, would provide considerable economic value to such parties or to potential independent energy suppliers and marketers with whom Vectren North competes. Mr. Bailey stated that knowledge of the Confidential Provisions by other customers could also establish a price ceiling in future negotiations, thereby limiting the potential revenues and benefits that accrue to ratepayers, shareholders, and Vectren North. He noted that knowledge of the Confidential Provisions by potential energy supply competitors would enable them to gain an unfair advantage in future competitive situations, and that disclosure of SDI's operational data would be of significant value to its competitors in terms of its current and future product output, and its cost structure, all of which could prove harmful to SDI.

Mr. Bailey testified that the information contained within the Confidential Provisions of the Contracts has been the subject of reasonable efforts to maintain its secrecy. He stated that within Vectren North and SDI, this information is disclosed only to those persons directly involved with negotiating, obtaining approval of, and monitoring compliance with the Contracts. He stated that outside of Vectren North and SDI, this confidential information will be disclosed only to individuals who have signed a confidentiality agreement.

B. <u>OUCC's Direct Evidence</u>. Ms. Ahmed testified that she reviewed the proposed confidential Contracts and the testimony of Mr. Bailey. She stated that she agreed the proposed Contracts meet the necessary criteria for Rate 270, as outlined in Mr. Bailey's testimony. Ms. Ahmed testified that she agreed with Mr. Bailey that the rates established in the Contracts are sufficient to cover the cost of the existing meters and service lines currently used to provide gas service to SDI, and that the proposed rates will provide contribution to the recovery of Vectren North's fixed costs. Ms. Ahmed stated that the OUCC has determined that the Contracts are in the public interest, will assist Vectren North's ability to retain a large, viable industrial customer, will

benefit Vectren North's existing and future gas customers, and will also help SDI maintain stable and competitive rates. Ms. Ahmed testified further that the Contracts encourage SDI to maintain an Indiana presence through favorable rates, thereby benefiting Indiana's economy. Ms. Ahmed stated that the OUCC recommends the Contracts be approved.

5. **Commission Discussion and Findings**. Vectren North seeks approval of the Contracts under the provisions of Ind. Code §§ 8-1-2-24 and 8-1-2-25. Ind. Code § 8-1-2-24 provides:

> Nothing in this chapter shall be taken to prohibit a public utility from entering into any reasonable arrangement with its customers or consumers, or with its employees or with any municipality in which any of its property is located, for the division or distribution of its surplus profits or providing for a sliding scale of charges or other financial device that may be practicable and advantageous to the parties interested. No such arrangement or device shall be lawful until it shall be found by the commission, after investigation, to be reasonable and just and not inconsistent with the purpose of this chapter. Such arrangement shall be under the supervision and regulation of the commission.

Ind. Code § 8-1-2-25 provides:

> 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, discounted rate 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 Ind. Code ch. 8-1-2.

The evidence demonstrates that the Contracts are reasonable. Mr. Bailey testified that the Contracts fulfill the criteria under Rate 270, and noted that the Contracts have a term of ten years during which SDI has agreed not to directly or indirectly bypass Vectren North's system, or use an energy service other than natural gas. The evidence demonstrates that the rates are sufficient to cover the costs of the existing meters and service lines currently used to provide gas service to SDI plus a contribution to the recovery of Petitioner's fixed costs, which benefits Vectren North's customers. The evidence confirms that the OUCC reviewed the terms of the Contracts and recommends approval of Vectren North's request for relief.

The Commission finds that the evidence submitted in support of the Contracts satisfies all of the legal requirements imposed by Ind. Code §§ 8-1-2-24 and 8-1-2-25. Thus, we find that the Contracts are reasonable and just, practicable and advantageous to SDI, Vectren North, and to Vectren North's existing and future customers, and are approved.

6. **Confidential Information**. Vectren North sought a determination that Confidential Information involved in this proceeding is exempt from public disclosure under Ind. Code § 8-1-2-29 and Ind. Code ch. 5-14-3. This request was supported by the direct testimony of and an Affidavit signed by Thomas L. Bailey. On December 11, 2015, the Presiding Officers determined the Confidential Provisions to be entitled to confidential treatment on a preliminary basis. We find such information qualifies as confidential trade secret information pursuant to Ind. Code § 5-14-3-4 and Ind. Code § 24-2-3-2. This information has independent economic value from not being generally known or readily ascertainable by proper means. The evidence demonstrates that Vectren North and SDI have taken reasonable steps to maintain the secrecy of the information, and disclosure of this information would cause harm to both Vectren North and SDI. Therefore, we find this information should be exempt from the public access requirements contained in Ind. Code ch. 5-14-3 and Ind. Code § 8-1-2-29, and held confidential and protected from public disclosure by the Commission.

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

1. The Gas Service Contracts between Vectren North and SDI are approved.

2. The Confidential Provisions as defined herein contain trade secrets, as defined in Ind. Code § 24-2-3-2, and are exempt from the public access requirements contained in Ind. Code ch. 5-14-3 and Ind. Code § 8-1-2-29.

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

STEPHAN, HUSTON, AND ZIEGNER CONCUR; WEBER NOT PARTICIPATING:

APPROVED: APR 13 2016

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

Shala M. Coe

Shala M. Coe
Acting Secretary of the Commission