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JUN 11 2004

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

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REGULATORY COMMISSION

VERIFIED JOINT PETITION OF INDIANA GAS)
COMPANY, INC., SOUTHERN INDIANA GAS)
AND ELECTRIC COMPANY AND THE BOARD)
OF DIRECTORS FOR UTILITIES OF THE)
DEPARTMENT OF PUBLIC UTILITIES OF THE)
CITY OF INDIANAPOLIS, AS SUCCESSOR) CAUSE NO. 42590
TRUSTEE OF A PUBLIC CHARITABLE TRUST,))
d/b/a CITIZENS GAS & COKE UTILITY,))
PURSUANT TO IND. CODE § 8-1-2-2.5 et. seq.))
FOR APPROVAL OF AN ALTERNATIVE))
REGULATORY PLAN WHICH WOULD))
ESTABLISH A PILOT UNIVERSAL SERVICE))
PROGRAM))

MOTION TO DISMISS JOINT PETITION AS TO CITIZENS

Come now certain intervenors designated collectively as the Manufacturing and Health Providing Customers (referred to herein as "MHPC"), by counsel, and file their Motion to Dismiss Joint Petition as to Citizens ("Motion") pursuant to the Rules of this Commission including 170 IAC 1-1.1-12, and in support thereof, state the following:

Procedural Background

1. On March 4, 2004 Indiana Gas Company, Inc., Southern Indiana Gas and Electric Company and the Board of Directors for Utilities of the Department of Public Utilities of the City of Indianapolis, as successor trustee of a public charitable trust, d/b/a Citizens Gas & Coke Utility ("Citizens" and collectively the "Petitioners"), filed their Joint Verified Petition (the "Petition") seeking to implement a "Universal Service Program" by means of an Alternative Utility Regulatory Act Ind. Code § 8-1-2.5 et. seq.
2. On March 5, 2004 there was filed in this Cause (a) a Stipulation and Settlement Agreement between Citizens Gas & Coke Utility and the Indiana Office of

Utility Consumer Counselor (“OUCC”)(amended and refilled on April 30, 2004)(“New Stipulation”).

Motion to Dismiss

The Proposal by Citizens Should be Dismissed for Violating the Stipulation and Settlement Agreement Approved by the Commission in Cause No. 41605

3. The Alternative Regulatory Plan offered by Citizens in this Cause is in direct violation of, and fails to follow the agreed upon method of modifying, the Stipulation and Settlement Agreement approved by this Commission on December 11, 2002 in Cause No. 41605 (“Citizens Settlement”).

4. The Citizens Settlement provided for the establishment of a Customer Benefit Tracker (“CBT”). It seeks to upset the balancing of interests that led to the Citizens Settlement and the finding by the Commission that it was in the public interest.

5. The Citizens Settlement provided that some of the available funds from Citizens’ unregulated businesses and affiliates or subsidiaries would be distributed to Citizens customers and some would be retained by Citizens to cover certain FAS 106 and FAS 71 costs.

6. The Citizens Settlement provided:

As a condition precedent to any recovery, in whole or in part on an annual basis, of FAS106 and/or FAS71 costs as provided above, Citizens must pass through to its customers via the CBT an amount that is at least equal to the amount of Citizens recovery through the CBT of its aforesaid FAS106 and FAS71 costs. If there is not a complete match during any year, then Citizens shall not recover FAS106 or FAS71 costs through the CBT credit mechanism in excess of the amount made available to its customers that year through the CBT.

7. Citizens proposal in this Cause is in direct violation with this provision of the Citizens Settlement.

8. As the deposition of Mr. Sawyers shows, Citizens intends to recover its half of the CBT funds, but take the match that Citizens is required to “pass through to its customers via the CBT” and use those funds to pay for the Citizens’ proposed universal service fund.

9. By its proposal, Citizens not only is failing to live up to its promise to pass through funds to its customers through the CBT, but it is failing to live up to its agreement not to take funds to pay for FAS106 and FAS71 in excess of those made available to customers through the CBT.

10. Further, the Citizens Settlement provided as follows:

The Parties agree that this Agreement, and the modified alternative regulatory plan agreed to herein, may not be amended, changed, or terminated except pursuant to a motion, petition or application of an express “reopener” provision, followed by notice, a hearing and final order of the Commission. The Parties further agree that no petition seeking an amendment, change, or termination of the Agreement, or the modified alternative regulatory plan, will be filed with the Commission by any party without concurrently serving other Parties to this Agreement with written notice, and a copy, of such filing. The Parties further agree that the Commission should consider whether any proposed amendment, change or termination of the modified alternative plan is consistent with the public interest and should not apply the standard set forth in the last sentence of Ind. Code § 8-1-2.5-7.

11. Just as Citizens would fail to live up to its duty to distribute funds to its customers through the CBT under its proposal, Citizens has failed to comply with the provisions spelling out the process for seeking an amendment to the Citizens Agreement.

12. Citizens did not seek any modification of the Citizens Agreement through a petition seeking an express “reopener.”

13. Citizens did not concurrently serve all Parties to the Citizens Agreement with a copy of any such petition seeking a reopener.

14. Citizens entered into the Citizens Settlement voluntarily and agreed to live up to certain obligations under the Citizens Settlement.

15. Citizens has violated the Citizens Settlement, and by supporting Citizens' proposal, the Office of Utility Consumer Counselor ("OUCC") has participated willingly in Citizens' violation.

16. Citizens and the OUCC, two of the three parties to the Citizens Settlement, have filed in this Cause a New Stipulation that would authorize Citizens to defeat its commitments to all customers under the Citizens Settlement – that is, the promise to return excess funds to all customers through the CBT has been replaced with a plan to take a substantial portion of the excess funds and give them to a small percentage of Citizens' customers.

17. Citizens' effort to avoid its duties under the Citizens Settlement to -- (a) distribute funds to ratepayers through the CBT, (b) to not take more funds for FAS106 and FAS71 than it returns through the CBT to ratepayers, and (c) to follow designated procedures in the event Citizens wanted to modify its obligations under the Settlement Agreement -- all warrant a dismissal of the Citizens' portion of this Cause.

18. Citizens' tariffs currently provide what they are required to do – all rate classes eligible for Rider C, from residential to large volume delivery customers, receive a reduction in their service bill based on volume of consumption.

19. Citizens' proposal will deprive its customers of the benefit of the bargain they negotiated in 41605 – the return of excess funds to all eligible customers on a volumetric basis.

20. Citizens should be held to its commitments to the Parties and its ratepayers.

21. The failure to follow the procedure agreed to in the Citizens Settlement is significant. By requiring parties who seek to alter their promises or change the agreement to file for such change in the Citizens Settlement by an express reopener, parties to that accord can address any such proposal in light of the context of the entire accord and the give and take reflected therein and not, as Citizens has done here, be put in the position of considering only one piece of the pie as a stand-alone matter.

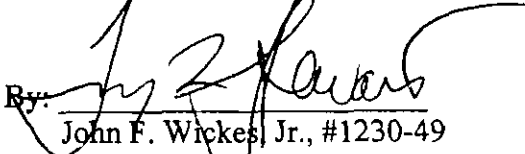
22. Citizens proposal in this Cause should be dismissed and Citizens should be required to fulfill its promises contained in the Citizens Settlement and approved by this Commission.

WHEREFORE, Manufacturing and Health Providing Customers respectfully request the Commission to DISMISS the Joint Petition as to Citizens and for all other relief just and proper.

DATED: June 11, 2004

Respectfully submitted,

LEWIS & KAPPES, P.C.

By: 
John F. Wickes, Jr., #1230-49
Timothy L. Stewart, #2189-49

LEWIS & KAPPES, P.C.
1700 One American Square
Box 82053
Indianapolis, Indiana 46282
(317) 639-1210
(317) 639-4882 (fax)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of the foregoing document has been served upon the following by **email**, and by **first class**, United States mail, postage prepaid, this 11th day of June, 2004:

Anne E. Becker Office of the Utility Consumer Counselor 100 North Senate Avenue, Room N501 Indianapolis, Indiana 46204	Robert E. Heidorn Vice President and General Counsel Vectren Corporation 20 N.W. Fourth Street P.O. Box 209 Evansville, IN 47702-0209
Michael B. Cracraft Steven W. Krohne Hackman Hulett & Cracraft, LLP One Indiana Square, Suite 2400 Indianapolis, IN 46204-2030	Jerome Polk Michael Mullett Mullett Polk & Associates, LLC 309 West Washington St., Ste. 233 Indianapolis, Indiana 46204

LEWIS & KAPPES, P.C.

By: 

Timothy L. Stewart

LEWIS & KAPPES, P.C.
1700 One American Square
Box 82053
Indianapolis, Indiana 46282-0003
317/639-1210