

**BEFORE THE
INDIANA UTILITY REGULATORY COMMISSION**

PETITION OF LNG INDY, LLC FOR A FINDING)
THAT CERTAIN INFORMATION IN AFFILIATE)
CONTRACT CONTAINS CONFIDENTIAL,)
PROPRIETARY, COMPETITIVELY SENSITIVE) CAUSE NO. 44867
AND/OR TRADE SECRET INFORMATION AND)
SHOULD BE PROTECTED FROM PUBLIC)
DISCLOSURE PURSUANT TO 170 IAC 1-1.1-4, IND.)
CODE § 8-1-2-29 AND IND. CODE § 5-14-3-4)

REQUEST FOR FINDING OF CONFIDENTIALITY

LNG Indy LLC d/b/a Kinetrex Energy (“Petitioner” or “Kinetrex”), pursuant to 170 IAC 1-1.1-4, respectfully requests a finding by the Indiana Utility Regulatory Commission (“Commission”) that certain information hereinafter described and contained in that certain Base Contract for Sale and Purchase of Natural Gas (“Base Contract”), which was previously submitted to the Commission’s Office of General Counsel by 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 Thermal”), is confidential, proprietary, competitively sensitive and/or trade secret, exempt from public disclosure, and should be protected from public disclosure by all parties, the Commission, and its Staff. In support thereof, Kinetrex states as follows:

1. Kinetrex is a limited liability company organized and existing under the laws of the State of Indiana with its principal office at 2020 N. Meridian Street, Indianapolis, Indiana 46204. Kinetrex is engaged in the manufacturing and selling of liquefied natural gas, and also is engaged in the natural gas marketing and trading business. In the Commission’s Order in Cause No. 44277, Kinetrex was determined to be a “public utility” within the meaning of Ind. Code § 8-1-2-1, as well as an “energy utility” within the meaning of Ind. Code § 8-1-2.5-2. Also, in the

Commission's Order in Cause No. 44277, the Commission declined to exercise its full jurisdiction over Petitioner pursuant to Ind. Code § 8-1-2.5-5, except as specifically stated within such Order.

2. The statutes and regulations Kinetrex considers applicable to this matter include Ind. Code §§ 8-1-2-29 and 5-14-3-4 and 170 IAC 1-1.1-4.

3. The names and addresses of Kinetrex's attorneys in this matter are Steven W. Krohne and Mark R. Alson, One American Square, Suite 2900, Indianapolis, Indiana 46282, and such attorneys are duly authorized to accept service of papers in this Cause on behalf of Petitioner.

4. On September 7, 2016, Kinetrex and Citizens Thermal executed the Base Contract, pursuant to which Kinetrex will sell natural gas to Citizens Thermal for a term beginning on October 1, 2016 and ending September 30, 2019. Kinetrex understands that Citizens Thermal submitted on September 30, 2016 a redacted version of the Base Contract to the Commission's Office of General Counsel in accordance with the procedures governing the filing and review of affiliate contracts.

5. Kinetrex considers the pricing and other economic terms set forth in the Base Contract to be confidential, trade secret and proprietary and therefore exempt from the public access requirements of Indiana Code §§ 5-14-3-4 and 8-1-2-29. If disclosed, the economic terms by which Kinetrex sells natural gas to Citizens Thermal could be used by Kinetrex's other gas marketing customers to negotiate contracts with Kinetrex to its competitive detriment.

6. Accordingly, Section 15.10 of the Base Contract provides: "neither party shall disclose directly or indirectly without the prior written consent of the other party the terms of any transaction to a third party (other than the employees, lenders, royalty owners, counsel,

accountants and other agents of the party, or prospective purchasers of all or substantially all of a party's assets or of any rights under this Contract, provided such persons shall have agreed to keep such terms confidential). . . . Each party shall notify the other party of any proceeding of which it is aware which may result in disclosure of the terms of any transaction (other than as permitted hereunder) and use reasonable efforts to prevent or limit the disclosure.”

7. Citizens Thermal submitted a redacted version of the Base Contract to the Office of General Counsel after affording Kinetrex the opportunity to redact certain trade secret pricing and economic terms (the “Confidential Information”) contained in the Base Contract.

8. Kinetrex seeks a Commission finding that the Confidential Information is confidential, proprietary, competitively sensitive, and/or trade secret, and therefore exempt from disclosure under Ind. Code § 8-1-2-29 and Ind. Code § 5-14-3.

9. As shown by the affidavit of Terry Peak, attached hereto as Exhibit “A,” the Confidential Information: (i) derives actual and potential independent economic value from being neither generally known to, nor readily ascertainable by proper means by, other persons who could obtain economic value from its disclosure or use; and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

10. The Confidential Information, if disclosed to Kinetrex’s prospective customers or otherwise made publicly available, would have a substantial detrimental effect on Kinetrex. Kinetrex has taken steps to limit access to the Confidential Information to those employees who need to know the information.

11. Based upon the foregoing, Kinetrex requests the Commission determine that the Confidential Information is confidential and trade secret within the meaning of Ind. Code § 5-14-3-4(a) as defined by Ind. Code § 24-2-3-2. Once such a determination is made, Kinetrex will

submit to the Office of General Counsel a single copy of the Base Contract containing the Confidential Information copied on light green paper and in a sealed envelope, designating that the contents to be confidential and proprietary material submitted under an order of confidentiality.

12. Kinetrex further understands Citizens Thermal has provided an unredacted version of the Base Contract, which includes the Confidential Information, to the Indiana Office of Utility Consumer Counselor pursuant to a Non-Disclosure Agreement.

13. Kinetrex requests that the Commission protect the Confidential Information from disclosure and limit access to those Commission employees with a need to review the Confidential Information. Further, Kinetrex requests that the Commission not disclose the Confidential Information to persons outside the Commission unless that person has entered into an appropriate protective agreement with Kinetrex.

WHEREFORE, Kinetrex respectfully moves that the Commission make and enter an order in this Cause:

- (i) Finding the unredacted Base Contract, confidential, proprietary, competitively sensitive, and/or trade secret, and therefore exempt from disclosure pursuant to Ind. Code § 8-1-2-29 and § 5-14-3-4; and
- (ii) Granting such other and further relief as the Commission may deem necessary and appropriate in the premises.

Respectfully submitted,

/s/ Mark R. Alson

Steven W. Krohne (Atty. No. 20969-49)

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An Attorney for LNG Indy LLC d/b/a Kinetrex
Energy

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served this 11th day of October, 2016 by personal delivery or electronic mail on the following:

Randall C. Helmen
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/s/ Mark R. Alson
An Attorney for LNG Indy LLC d/b/a
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CODE § 8-1-2-29 AND IND. CODE § 5-14-3-4)**

**AFFIDAVIT
of
TERRY PEAK**

I, Terry Peak, state as follows:

1. I am employed by LNG Indy, LLC, d/b/a Kinetrex Energy (“Kinetrex”). I serve as Senior Vice President, Pipeline Natural Gas Operations. As such, I have personal knowledge of the matters set forth herein. Specifically, I was involved in the negotiation of the Base Contract for Sale and Purchase of Natural Gas (“Base Contract”) and executed it on behalf of Kinetrex. I also have personal knowledge of the efforts Kinetrex has taken to maintain the secrecy of information that would reveal the pricing and other economic terms of the Base Contract to other prospective customers. I am authorized to make this Affidavit on behalf of Kinetrex.

2. Kinetrex is engaged in the natural gas marketing and trading business.

3. On September 7, 2016, Kinetrex and Citizens Thermal executed the Base Contract, pursuant to which Kinetrex will sell natural gas to Citizens Thermal for a term beginning on October 1, 2016 and ending September 30, 2019. Kinetrex considers the pricing and other economic terms set forth in the Base Contract to be confidential, trade secret and proprietary.

Exhibit “A”

4. Kinetrex's gas marketing customers have both the incentive and the technical savvy to use any information they can obtain regarding Kinetrex's arrangements with other customers as leverage in negotiating their own contracts for services.

5. The pricing and economic terms in the Base Contract are confidential, proprietary, competitively sensitive, and/or trade secret (the "Confidential Information"), and therefore exempt from disclosure under Ind. Code § 8-1-2-29 and Ind. Code § 5-14-3. Disclosure of the Confidential Information would cause substantial detriment to Kinetrex.

6. The Confidential Information, if disclosed or otherwise made publicly available, could be used by Kinetrex's other or potential customers to Kinetrex's detriment in negotiations by effectively establishing a price "ceiling" for its gas marketing services.

7. Accordingly, public disclosure of the Confidential Information would place Kinetrex at a distinct competitive disadvantage.

8. The Confidential Information should be protected from disclosure under Indiana law. The nature of the Confidential Information is such that it derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. The Confidential Information is not readily ascertainable or known by customers of Kinetrex.

9. The Confidential Information is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Specifically, Kinetrex has designated documents containing the Confidential Information as trade secret or proprietary and limited disclosure to a select group of employees, consultants and counsel on a need to know basis.

10. No amount of independent research could reveal the Confidential Information to Kinetrex's potential customers.

11. For the reasons set forth herein, the Confidential Information should be excepted from public disclosure.

I affirm, under the penalties for perjury, that the foregoing representations are true to the best of my knowledge, information and belief.

Terry Peak
Terry Peak

Subscribe and sworn to before me, a Notary Public, this 10th day of October, 2016.

Deshaun T. Hale
Signature

Deshaun T. Hale
Printed Name

My Commission Expires: 11/19/2023

My County of Residence: Marion

