

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF SABIC INNOVATIVE PLASTICS MT.)
VERNON, LLC FOR A NECESSITY CERTIFICATE)
PURSUANT TO INDIANA CODE § 8-1-2-87.5 FOR)
PURPOSES OF RENDERING NATURAL GAS)
DISTRIBUTION SERVICE IN POSEY COUNTY, INDIANA,)
AND DECLINING FURTHER JURISDICTION OVER THIS)
PETITIONER PURSUANT TO INDIANA CODE § 8-1-2.5-5.)

CAUSE NO. 44701

APPROVED: MAY 11 2016

ORDER OF THE COMMISSION

Presiding Officers:
James F. Huston, Commissioner
Aaron A. Schmoll, Senior Administrative Law Judge

On November 2, 2015, SABIC Innovative Plastics Mt. Vernon LLC (“Petitioner” or “SABIC”) filed its Verified Petition with the Indiana Utility Regulatory Commission (“Commission”) initiating this Cause. On November 2, 2015, Petitioner also filed its direct case consisting of the testimony and exhibits of its Senior Manager for Central Engineering, Keith A. Mesker. On November 16, 2015, the Southern Indiana Gas and Electric Company d/b/a Vectren Energy of Indiana, Inc. (“Intervenor” or “Vectren South”) filed its petition to intervene. On January 20, 2016, Vectren South filed the testimony of Thomas L. Bailey, its Director of Industrial Sales and Economic Development for Vectren Utility Holdings (“Vectren”). On that same day, the Indiana Office of Utility Consumer Counselor (“OUCC”) filed its direct case consisting of the testimony and exhibits of Bradley E. Lorton, Utility Analyst. On February 3, 2016, Petitioner filed its rebuttal case consisting of the testimony of Keith A. Mesker.

On February 18, 2016, at 1:30 p.m. in Room 222 of the PNC Center, 101 W. Washington Street, Indianapolis, Indiana, an evidentiary hearing in this Cause was held. Notice of such evidentiary hearing had previously been provided as required by law, proofs of publication were incorporated into the record and placed in the official files of the Commission. Petitioner, Intervenor, and the OUCC appeared and participated. No members of the general public appeared or sought to participate. At such evidentiary hearing, the parties introduced all previously filed testimony and exhibits without objection. The Commission now finds as follows:

- 1. Commission Jurisdiction.** Ind. Code § 8-1-2-87.5 provides that any person, corporation, or other entity that is (1) engaged in the transportation of gas from outside of Indiana for direct sale or delivery to any end use consumer within the state; or (2) is engaged in the transportation of gas solely within the state on behalf of any end use consumer; or (3) is an end use consumer engaged in the transportation within this state of gas owned or acquired by such end use consumer for use in this state, other than transportation on the premises where the gas is consumed; is a public utility as defined and must obtain a necessity certificate from the

Commission before it may engage in such activities. Pursuant to the above statute, this Commission is authorized following a hearing to issue such a necessity certificate if Petitioner presents certain evidence as described in Ind. Code § 8-1-2-87.5. Accordingly, the Commission has jurisdiction over the Petitioner and the issues raised in this Cause.

2. **Petitioner’s Characteristics.** Petitioner is a limited liability company and large industrial manufacturer of thermoplastics. It owns and operates an industrial campus in Posey County, Indiana. According to the evidence presented, this industrial campus is designed solely for the purpose of producing chemicals, combining such chemicals with various raw materials, and thereafter producing thermoplastics, which are sold worldwide. Petitioner’s industrial campus contains approximately 923 acres and is located near Mt. Vernon, Indiana.

3. **Relief Requested.** Petitioner seeks a necessity certificate pursuant to Ind. Code § 8-1-2-87.5 to provide natural gas service within its industrial campus as such industrial campus is defined on Exhibit A (Plat Map) and Exhibit B (Legal Description) as attached to its Petition. Such industrial campus is located in portions of Sections 13, 14, 18, and 24 of Black Township, Posey County, Indiana. Petitioner also seeks a declination of jurisdiction in whole or in part pursuant to Ind. Code § 8-1-2.5-5.

4. **Evidence of the Parties.**

a. **Petitioner’s Evidence.** Mr. Mesker described Petitioner’s request as being driven by SABIC’s need to obtain large amounts of high-pressure natural gas delivered to its industrial campus in order to fuel certain electric cogeneration facilities, which will replace existing coal-fired boilers currently in use on the industrial campus. Mr. Mesker explained that the need to replace the coal-fired boilers is due to the Boiler MACT rules established by the United States Environmental Protection Agency. Petitioner entered into a precedent agreement with Texas Gas Transmission, LLC (“Texas Gas”) to construct a 10” high pressure main from the metering point on the Texas Gas pipeline to the cogeneration facilities. From that high pressure main, SABIC will construct an 8” main to the existing SABIC mains within the industrial campus.

Petitioner explained its intent is to acquire natural gas on the open market at the lowest possible cost and have such natural gas delivered through the Texas Gas interstate pipeline to its industrial campus. Petitioner will distribute such natural gas to itself, third parties that it controls, the buildings and facilities that it owns and controls, and other third parties who may locate on the industrial campus in the future. Mr. Mesker explained that SABIC currently owns all natural gas mains within its industrial campus used for purposes of distributing natural gas within this industrial campus. Mr. Mesker also explained that SABIC has designed additional natural gas mains to connect to the interstate pipeline for purposes of distributing such natural gas to itself and to at least one third party – Mt. Vernon Phenol Plant Partnership (“MVPPP”). Mr. Mesker explained that 51% of the ownership interest of MVPPP is currently held by SABIC. However, he noted that it is appropriate to obtain a necessity certificate under Ind. Code § 8-1-2-87.5 to avoid any concerns in the future about service to future third parties located on the industrial campus. Though Mr. Mesker also explained that SABIC’s industrial campus is not designed for, nor open to, just any third party as an industrial park might be. Rather, SABIC’s

industrial campus is designed and currently operated solely to provide a site for SABIC's production of engineered thermoplastics and entities that assist SABIC in that production. Mr. Mesker specifically noted that SABIC manages and controls this industrial campus and does not intend to distribute natural gas to the general public, nor extend natural gas mains outside of the its industrial campus.

Mr. Mesker described the status of the construction of the project with Texas Gas, noting that the majority of the required equipment has been obtained. He explained that the construction is on schedule and expected to be completed by October of 2016. He noted that the Petitioner has had numerous conversations about the project with Vectren South.

Mr. Mesker testified that Petitioner has the necessary power and authority to obtain the necessity certificate, and thereafter render the natural gas service within the industrial campus as proposed. In support of his opinion, Mr. Mesker described the internal vetting process for the project and the necessity certificate, which includes Petitioner's Board of Directors. He indicated that SABIC owns and controls all the property on which the natural gas mains will be constructed within the industrial campus. He described SABIC's management of its industrial campus, noting that the provision of natural gas would simply be another service provided by SABIC within the industrial campus. He testified that the Petitioner owns all of the existing natural gas mains being used within the industrial campus currently, and will own all the new natural gas mains to be constructed within the industrial campus.

In addressing the financial ability of the Petitioner to provide natural gas service within the industrial campus, Mr. Mesker indicated that the financial information maintained by SABIC is not publicly distributed. However, he described certain information, which supports a conclusion that Petitioner has the financial resources to provide this natural gas service. He testified that Petitioner employs a very large workforce, which includes a number of PhD chemists, experienced engineers, attorneys, and other professionals. Also, Petitioner has entered into various contracts with vendors to support SABIC's core manufacturing process. He indicates that Petitioner has regularly met all of its financial obligations to both employees and outside vendors. In addition, Petitioner has arranged both internal and external financing for purposes of constructing the various facilities involved in this project. He noted that SABIC has already completed the construction of an 8" main to be used in the distribution of natural gas within the industrial campus. He pointed to a precedent agreement, which was entered into between SABIC and Texas Gas for purposes of constructing the interstate pipeline and thereafter delivering natural gas to SABIC's industrial campus. Finally, he noted that SABIC has made significant investments in its industrial campus and this project.

In speaking to the issue of public convenience and necessity, Mr. Mesker testified that Petitioner had no choice but to make various changes in the delivery of natural gas to its industrial campus in order to ultimately meet United States Environmental Protection Agency regulations. To obtain the required natural gas within a reasonable timeframe, and at a reasonable cost, Petitioner concluded that it needed to control the delivery of that natural gas to its industrial campus. By making its investment in facilities involved with the delivery of natural gas and ultimately the cogeneration facilities, Petitioner can drive down its energy costs, which will lead to the stability and competitiveness of its industrial campus, and ultimately sustain the

industrial campus in Posey County. Finally, Mr. Mesker pointed out that the risk associated with the investment in this project falls squarely on SABIC.

Turning to the final issue of Ind. Code § 8-1-2-87.5, Mr. Mesker described why granting this necessity certificate is in the public interest. He noted that the extension of natural gas mains and other components of this project will add jobs. By granting the necessity certificate and controlling its energy costs, SABIC will become more competitive in the market for engineered thermoplastics. SABIC will be the one deploying the capital for this natural gas distribution, thus freeing up Vectren South to deploy capital elsewhere. Granting the necessity certificate would create the opportunity to maintain or expand employment in this area. These facts taken together lead Mr. Mesker to believe that public interest will be served by the issuance of a necessity certificate as requested.

Mr. Mesker indicated that there was no need to continue ongoing regulatory review of Petitioner as it relates to its natural gas distribution within its industrial campus because SABIC itself will be the primary user of natural gas delivered to the industrial campus. Third parties that locate on the industrial campus do so because they are supporting SABIC's production of engineered thermoplastics. He testifies that SABIC will not be distributing natural gas either directly or indirectly to the general public. To the extent natural gas is delivered to true third parties, not controlled by SABIC, it will be done through a negotiated agreement with these sophisticated entities. Finally, Mr. Mesker testified that to the extent third parties locate in the future on the industrial campus and want natural gas from Vectren South, Petitioner would have no objections.

b. OUCC's Evidence Mr. Lorton's testimony discussed Ind. Code § 8-1-2-87.5 as it relates to determining whether Petitioner's plans would qualify it as a public utility as well as SABIC's burden of proof to acquire a Certificate of Public Convenience and Necessity ("CPCN"). Mr. Lorton discussed decisions in *BP Products North America v. Indiana Office of Utility Consumer Counselor* ("*BP Products*"). Based upon his review of the case law, Mr. Lorton concluded that the Petitioner's request in this proceeding requires Petitioner to seek a necessity certificate from the Commission.

Mr. Lorton testified he reviewed Petitioner's confidential income statement and balance sheet, considered the capital Petitioner has committed to date for construction of natural gas mains, and considered the external financing of the interstate pipeline arranged through Texas Gas. Based on his review, Mr. Lorton concluded Petitioner has the financial ability to construct the pipeline and distribution system within its industrial campus.

Mr. Lorton said the OUCC obtained information from Petitioner through discovery about its energy management operations in Indiana, Illinois, New York, and Mississippi, which allowed him to conclude that Petitioner possesses the technical skill to manage the procurement of natural gas and its distribution within the industrial campus.

Mr. Lorton testified Vectren South is already certified to provide natural gas service to this area. He recognized Petitioner's response to OUCC DR 1.16 stating Petitioner "believes

Vectren South does not oppose the relief being sought,” but noted the OUCC at the time of the filing of its testimony had not seen any supporting factual evidence.

Mr. Lorton testified the only evidence Petitioner offered supporting its claim that the public interest would be served was Petitioner’s testimony referencing a) its ability to control its own energy costs, b) its ability to more aggressively compete in the market for engineered thermoplastics, and c) “opportunities to maintain and possibly expand employment.”

Regarding Petitioner’s request that the Commission decline jurisdiction going forward, Mr. Lorton cited Ind. Code § 8-1-2.5-5 and its requirements. He testified Petitioner’s case-in-chief testimony failed to directly address these criteria. Mr. Lorton cited Petitioner’s request for authority to serve “other third parties” located on SABIC’s campus. He included SABIC’s responses to OUCC DR 1.17 and 1.18 in which SABIC could not identify possible future customers or verify any requirements prospective tenants would need to meet as a condition of locating on SABIC’s campus. Mr. Lorton testified that if SABIC’s declination of jurisdiction request were granted, SABIC would be a public utility offering retail natural gas service in Indiana, possibly to commercial customers not owned, operated, or related to SABIC, without regulation by either state or federal authorities. Mr. Lorton recommended Petitioner’s requested necessity certificate be denied, but if granted, he recommended against declination of jurisdiction by the Commission.

c. **Intervenor’s Evidence.** Mr. Bailey stated that Vectren South, which is certified to serve this area pursuant to the Commission’s July 18, 1956 Order in Cause No. 26729, does not oppose SABIC’s request for a necessity certificate to transport natural gas and to provide natural gas distribution service within a defined area related to its facilities and third parties directly involved in its production process. However, Mr. Bailey stated that Vectren South intends to continue to be the public utility providing natural gas service to the area. Therefore, Vectren South believes some limitations to SABIC’s provision of gas service are appropriate.

Mr. Bailey stated that Vectren South has expended financial resources to provide service to customers in the area, and it would be inappropriate for SABIC to provide gas service to those customers. Accordingly, Mr. Bailey suggests that the industrial campus be defined by a specific boundary and proposes the boundary outlined in Attachment TLB-2 of Intervenor’s Ex. 1 (“Attachment TLD-1”).

Mr. Bailey suggests the Petitioner’s necessity certificate also be limited to allowing Petitioner to provide service to third parties within this boundary if those third parties provide services or products that are integral to SABIC’s thermoplastics business. Mr. Bailey stated that under this proposal, SABIC could provide gas service only to its business partners, to whom it would have an incentive to provide low-priced gas. Finally, Mr. Bailey suggests that the Commission should retain jurisdiction to enforce these limitations on Petitioner’s necessity certificate.

d. **Rebuttal Testimony.** Petitioner offered rebuttal testimony through its witness Mr. Mesker, which addressed the positions of both the OUCC and Vectren South.

Beginning with Vectren South, Mr. Mesker indicated that the Petitioner is in agreement with the geographic limitation proposed by Vectren South. Mr. Mesker also indicated that Petitioner is in agreement with the limitation of service to third parties that directly provide services or products to SABIC which are integral to SABIC's thermoplastics business. He explained that Petitioner's representatives have had discussions with Vectren South about these limitations, indicated they are in agreement with such limitations, and explained that Petitioner believes Attachment TLB-2 represents SABIC's current contiguous industrial campus.

Turning to Vectren South's proposal of ongoing Commission jurisdiction to enforce these limitations on the necessity certificate, Mr. Mesker explained that Petitioner believes the Commission always has jurisdiction to enforce limitations on necessity certificates. He also indicates that Petitioner agreed it would need to return to the Commission and seek the Commission's approval if it should ever want to change the necessity certificate. However, Mr. Mesker also pointed out that SABIC has no plans to return to the Commission in the foreseeable future. He further explained that SABIC's request for declination of jurisdiction was designed to eliminate the need to petition the Commission to establish rates, request approval of future financing, or file a tariff or annual reports as well as eliminate any public utility fees and any other ongoing regulatory review.

Concerning the testimony of the OUCC, Mr. Mesker pointed out that the Petitioner is in agreement with the OUCC that the *BP Products* case law required SABIC to come before the Commission and seek this necessity certificate. With respect to the burden of proof for such necessity certificate, Petitioner agreed that Ind. Code § 8-1-2-87.5 describes the factors the Commission is to consider. Mr. Mesker referenced his prior direct testimony, which addresses those factors, and also offered some additional clarifying information.

With respect to the legal power and authority to obtain the necessity certificate and thereafter render natural gas service, Mr. Mesker noted this was specifically addressed in his direct testimony. The OUCC's concern about the lack of factual information to support Petitioner's belief in the lack of opposition from Vectren South is addressed by Vectren South's testimony in this proceeding. Mr. Mesker also pointed out that Vectren South had intervened in the FERC proceeding, Docket CP15-14, filed by Texas Gas to construct the interstate pipeline, and did not object to the construction or operation of the interstate pipeline to deliver natural gas to Petitioner's industrial campus.

With respect to the financial ability of Petitioner to provide the natural gas service, he referenced Mr. Lorton's review of confidential financial information and Mr. Lorton's conclusion that Petitioner has the financial ability to provide natural gas service within the industrial campus.

Turning to the issue of public convenience and necessity, he pointed out that Petitioner has been providing natural gas within its industrial campus for a long period of time. He also stated that Vectren South, while certified to provide service in the area, has no customers within the industrial campus beyond SABIC and is not objecting to a limited necessity certificate for Petitioner. Mr. Mesker noted that SABIC had initial discussions with Vectren South about transporting the needed amount of natural gas, but concluded that Vectren South did not have sufficient facilities within the area to provide the natural gas service required. Mr. Mesker

referenced again the FERC proceeding, CP15-14, and indicates he believes FERC also addressed this issue of public convenience and necessity as part of its approval process for the pipeline, which will terminate on Petitioner's industrial campus.

Regarding Mr. Lorton's reference about the public interest being served, Mr. Mesker again pointed to his direct testimony and stated that this necessity certificate will allow the maintenance and potential expansion of employment in an area where Alcoa has just announced it is shutting down a plant and laying off 600 people. Petitioner's ability to control its energy costs will likely lead to the ability of SABIC to maintain its employment or expand its employment in this same area near Evansville, Indiana. He pointed out that the Petitioner will be investing its money and thus incurring the risk related to this infrastructure and distribution of natural gas, not Vectren South nor the ratepayers. He believes the shifting of investment risk to the Petitioner is clearly in the public interest.

Focusing on Mr. Lorton's suggestion that the Commission retain some jurisdiction, Mr. Mesker pointed out that the Commission as the grantor of the necessity certificate would always have jurisdiction to enforce any limitation on the necessity certificate under Ind. Code § 8-1-2-87.5. He noted that Petitioner is not proposing to serve the general public and is agreeing with Vectren South to only serve those entities that are assisting Petitioner within its industrial campus.

Turning to the statutory citation in Witness Lorton's testimony of Ind. Code § 8-1-2.5-5; Mr. Mesker noted that the statute indicates the Commission can decline the exercise of its jurisdiction in whole or in part. In that regard, he indicated that Petitioner's request here was for a declination of ongoing jurisdiction over rates, tariffs, financing, annual reports, public utility fees or other regulatory review that the Commission determined was unnecessary rather than the elimination of all jurisdiction.

Mr. Mesker turned to the specific findings under Ind. Code § 8-1-2.5-5(b):

1. "Whether technological or operating conditions, competitive forces, or the extent of regulation by other state or federal regulatory bodies render the exercise, in whole or in part, of the jurisdiction of the Commission unnecessary or wasteful." Mr. Mesker stated that the purpose of the delivery of natural gas to the industrial campus is to decrease energy costs in order for the Petitioner and its business partners to become more competitive. He testified that the delivery of natural gas to the campus has already been reviewed and now approved by FERC. He further noted that competitive forces are already requiring entities such as SABIC to drive down its energy costs to the lowest cost possible, thus the Commission's ongoing review or the requirement of filing a tariff, rates, annual reports, and public utility fees is unnecessary.
2. "Whether the Commission's declining to exercise, in whole or in part, its jurisdiction will be beneficial to the energy utility, the energy utility's customers, or the state." Mr. Mesker testified that this language uses the disjunctive "or." Thus, for the Commission to decline jurisdiction, it is appropriate for the Commission to determine that one of these groups will be benefitted. The OUCC's testimony indicated that they agree that SABIC will be benefitted by the Commission declining jurisdiction. Vectren South

acknowledged that those parties assisting SABIC within its industrial campus should also be benefitted by lower gas prices since they are business partners of SABIC. Mr. Mesker indicated that the Petitioner agrees with both the OUCC and Vectren South in that regard. Finally, Mr. Mesker stated that this whole process will provide a benefit to the state by allowing SABIC to maintain and/or expand its employment. Further, Mr. Mesker suggested that both the Commission and the OUCC are already sufficiently busy regulating those public utilities who are actually serving the general public. Mr. Mesker concluded that the State of Indiana will also be benefitted by the Commission declining certain ongoing jurisdiction over Petitioner.

3. "Whether the Commission's declining to exercise, in whole or in part, its jurisdiction will promote energy utility efficiency." Mr. Mesker stated that the entire SABIC project is designed to improve energy efficiency. The delivery and distribution of natural gas will allow SABIC to retire its old coal-fired boilers and replace them with more efficient natural gas-fired boilers. As Mr. Mesker indicated, Petitioner intends to acquire natural gas at the best price the market will allow. Mr. Mesker stated SABIC is in essence a landlord, and it does not need ongoing regulatory review to encourage SABIC to promote energy efficiency within its industrial campus.
4. "Whether the exercise of Commission jurisdiction inhibits an energy utility from competing with other providers of functionally similar energy services or equipment." Mr. Mesker testified that the Petitioner believes ongoing regulatory review will indeed inhibit SABIC from serving itself and its industrial campus. Further, he stated there will be no competition with Vectren South in light of the clarifications Vectren South has proposed on the industrial campus boundary and future third-party entities to be served.

Finally, Mr. Mesker pointed out that SABIC is well aware of the need to come back to this Commission and apply for a new certificate should SABIC propose in the future to expand its natural gas service. Thus, Mr. Mesker suggested that SABIC has met each of the factors of Ind. Code § 8-1-2.5-5, and there is no benefit to SABIC or its industrial campus for ongoing regulatory review.

5. **Discussion and Findings.** Ind. Code § 8-1-2-87.5(b) states:

Any person, corporation, or other entity that:

- (1) is engaged in the transportation of gas from outside Indiana for direct sale or delivery to any end use consumer or consumers within this state;
- (2) is engaged in the transportation of gas solely within this state on behalf of any end use consumer or consumers; or
- (3) is an end use consumer engaged in the transportation within this state of gas owned or acquired by such end use

consumer for use in this state, other than transportation on the premises where the gas is consumed;

is a public utility as defined in section 1 of this chapter and must obtain a necessity certificate from the commission before it may engage in any activities described in this subsection. This subsection does not apply to a gas utility operating pursuant to an indeterminate permit or necessity certificate issued under section 87 of this chapter, nor to the production, sale, and gathering of natural gas produced in Indiana.

Petitioner's evidence indicates that it intends to cause natural gas to be delivered to its industrial campus and thereafter to distribute such natural gas to itself or to others located on its industrial campus. However, at this time, the only entity located on Petitioner's premises is MVPPP, in which SABIC holds a majority ownership share. In essence, SABIC is acquiring gas for itself as the end-use consumer on the premises owned by SABIC. Under the current scenario, SABIC is not a public utility under Section 87.5.

However, Ind. Code § 8-1-2-87.5(c) states that any "entity desiring to engage in the activities described in [Section 87.5(b)] shall file an application with the commission" in order to obtain a necessity certificate. SABIC has indicated that additional end-use consumers may locate to SABIC's campus, and in that scenario, SABIC would transport natural gas on behalf of an end-use consumer not subject to the exclusion set forth in Section 87.5(b)(3).

Ind. Code § 8-1-2-87.5(e) states the Commission shall grant a necessity certificate only if the Commission finds evidence of the following:

- 1) the applicant has the power and authority to obtain a certificate and render the requested service;
- 2) the applicant has the financial ability to provide the requested service;
- 3) public convenience and necessity require the providing of the requested service giving consideration to the availability of gas service from any gas utility authorized to serve end use customers within the geographic area covered by the application; and
- 4) the public interest will be served by the issuance of the necessity certificate.

Petitioner described: the internal vetting process that Petitioner used, its current distribution of natural gas within its industrial campus as a transport customer of Vectren South, and that it controls all of the buildings within its industrial campus. The evidence also shows that Petitioner has the technical skill to manage the procurement of natural gas and its distribution on SABIC's campus. We find Petitioner has power and authority to obtain the necessity certificate and thereafter render service.

Regarding Petitioner's financial ability to render natural gas service within its industrial campus, Petitioner described its investment in its industrial campus, its ability to regularly meet its financial obligations to employees and vendors, its establishment of internal and external financing, and its current activities of rendering natural gas service within its industrial campus. The evidence shows that Petitioner appears to possess sufficient financial resources and access to capital based on Petitioner's confidential income statements and balance sheet information. We find Petitioner has the financial ability required under Ind. Code § 8-1-2-87.5(e)(2).

Regarding the public convenience and necessity, Petitioner seeks authority to serve third parties on its industrial campus. Vectren South testified it did not intend to relinquish its certificate of necessity but would not oppose SABIC's proposal to transport gas and provide gas distribution service to its facilities and third parties directly involved in its production process. Petitioner indicated that third parties that wanted service provided by Vectren South should have that option. Vectren South suggested that SABIC's authority should be limited to SABIC's current campus as defined by the map attached to Mr. Bailey's testimony as Attachment TLB-2. In rebuttal, SABIC agreed with Vectren South's proposed limitations. Based on the evidence presented, we find that public convenience and necessity require a necessity certificate be granted to Petitioner.

The Commission also must consider whether granting a necessity certificate will serve the public interest in this instance. Petitioner's efforts to decrease its energy costs and become more competitive could allow it to maintain and potentially expand employment. Thus, we find the public interest will be served by granting Petitioner's requested necessity certificate.

Ind. Code § 8-1-2-87.5(f)(2) also indicates that the Commission may set terms, conditions, or limitations on any necessity certificate. Vectren South has proposed that the necessity certificate be limited to a defined boundary in Posey County, Indiana. Petitioner's witness indicates this defined boundary is essentially its contiguous industrial campus. Petitioner also indicates its agreement with this limitation. No party objected to this geographical limitation. Therefore, we find it is a reasonable limitation that a necessity certificate granted here be limited to the existing contiguous industrial campus operated by the Petitioner as specifically shown in Intervenor's Attachment TLB-2, which is attached and incorporated herein by reference. To the extent that Petitioner, in the future, wants to extend natural gas service beyond the boundaries shown in Attachment TLB-2, Petitioner must file a petition for such relief.

Vectren South also proposed that the necessity certificate be limited, allowing SABIC to serve only those entities providing services or products integral to Petitioner's production of engineered thermoplastics but not to third parties that are not directly involved in SABIC's production process. Petitioner has agreed to such limitation. Further, the Petitioner has testified that its industrial campus has been designed and operated to provide a location for itself and for those third parties who are assisting SABIC in the production of engineered thermoplastics. Thus, we find it reasonable to limit this necessity certificate to only include those third party entities that are providing services or products integral to Petitioner's production of engineered thermoplastics. We note however that no necessity certificate is necessary for Petitioner to transport natural gas and serve itself. Further, we note that the only existing third party identified on Petitioner's industrial campus—MVPPP—is a third-party entity which the Petitioner

currently owns and controls. As presented, Petitioner is not a public utility, and while the Commission agrees that a necessity certificate should be issued to SABIC, the issuance of the certificate absent satisfying one of the criteria under Section 87.5(b) does not make SABIC a public utility.

We note this issue in the context of SABIC's request that the Commission decline ongoing regulatory review of its natural gas distribution service within this defined industrial campus. Ind. Code § 8-1-2.5-5 states:

Sec. 5. (a) Notwithstanding any other law or rule adopted by the commission, except those cited, or rules adopted that pertain to those cited, in section 11 of this chapter, on the request of an energy utility electing to become subject to this section, the commission may enter an order, after notice and hearing, that the public interest requires the commission to commence an orderly process to decline to exercise, in whole or in part, its jurisdiction over either the energy utility or the retail energy service of the energy utility, or both.

In order for the Commission to decline jurisdiction under Chapter 2.5, a requesting entity must first qualify as an energy utility, which is defined, in pertinent part, as a "public utility within the meaning of IC 8-1-2-1 . . . engaged in the production, transmission, delivery, or furnishing of heat, light, or power." Ind. Code 8-1-2.5-2. As discussed above, SABIC does not currently qualify as a public utility by providing gas service to MVPPP, an entity on its premises in which it has a majority ownership. At such time that a true third-party entity locates on SABIC's campus and needs gas transportation service to be provided by SABIC, SABIC can notify the Commission of its change in status and seek, under a separate docket, a declination of Commission jurisdiction at that time.

Finally, although we find that SABIC is not currently a public utility, SABIC may be subject to, and must comply with, applicable pipeline safety laws, standards, and regulations.

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

1. Petitioner's necessity certificate is granted, but limited to its current contiguous industrial campus as described in our finding above and shown in Intervenor's Attachment TLB-2 and is further limited to service to third parties that are providing service or products to Petitioner that are integral to Petitioner's production of thermoplastics within its defined industrial campus, as described above.

2. Should Petitioner desire to expand its service beyond the current contiguous boundary of its industrial campus, it shall seek a new or amended necessity certificate from the Commission pursuant to Ind. Code § 8-1-2-87.5.

3. Should Petitioner desire to provide natural gas service to third parties other than those integral to its production of thermoplastics, Petitioner must seek a new or amended necessity certificate pursuant to Ind. Code § 8-1-2-87.5.

4. Petitioner's request that the Commission declines its jurisdiction over Petitioner pursuant to Ind. Code § 8-1-2.2-5 is premature. Petitioner may seek a declination of jurisdiction at such time that Petitioner meets the criteria for a public utility under Ind. Code § 8-1-2-87.5.

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

STEPHAN, HUSTON, AND ZIEGNER CONCUR; WEBER ABSENT:

APPROVED:

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



Mary M. Becerra
Secretary of the Commission