

ROBERT L. BROWN III
ATTORNEY AT LAW
1005 SOUTH MAIN STREET
CORBIN, KENTUCKY 40701

ROBERT L. BROWN III
SARA B. MAHAN

(606) 528-3073
FAX (606) 528-3289

June 16, 2009

VIA FACSIMILE AND MAIL

Mr. Jeff Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Blvd.
P.O. Box 615
Frankfort, KY 40602

RECEIVED
JUN 17 2009
PUBLIC SERVICE
COMMISSION

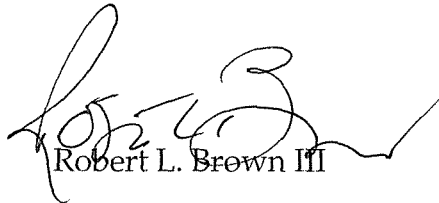
RE: CITIPOWER, LLC - Case No. 2009-00205

Dear Mr. Derouen:

Enclosed please find the original and ten (10) copies of Citipower, LLC's Response to Commission Staff's Initial Data Request to Citipower, LLC and an Entry of Appearance as it relates to the above-mentioned matter.

Your attention to this matter is appreciated, and should you have any questions or comments, please do not hesitate to contact me.

Sincerely,


Robert L. Brown III

RLB/ca

Enclosures

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PURCHASED GAS ADJUSTMENT
FILING OF CITIPOWER, LLC

CASE NO. 2009-00205

RESPONSE TO INITIAL DATA REQUEST OF COMMISSION STAFF
TO CITIPOWER, LLC

Comes now Citipower, LLC, ("Citipower") by and through the undersigned counsel, and states the following response to the Initial Data Request of Commission Staff to Citipower, LLC, with regard to the above-referenced case number:

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OF CITIPOWER, LLC

CASE NUMBER 2009-00205

1. Refer to Citipower's Quarterly Report of Gas Cost Recovery ("GCR") Rate Calculation, filed June 1, 2009. For the 12 months ended December 31, 2008, Schedule II shows purchases only from CitiGas, LLC ("CitiGas"). Explain why it is reasonable to base the price Citipower pays CitiGas for its gas supply on a price quoted by Citizens Gas Utility District ("Citizens Gas"), which supplied no gas to Citipower during the 12 months ended December 31, 2008.

RESPONSE: The GCR normally includes both prospective and retrospective calculations. As the GCR represents a Citipower's best estimate of its natural gas costs for the next period, this amount is based on the known costs of gas it has contracted to buy during that time and gas it has already purchased, as well as the estimated cost of gas that will be purchased at market prices during the period. In this case we are dealing with an "affiliate" as defined in KRS § 278.010 (18) therefore "arm's length" pricing can theoretically differ from actual third party costs due to estimations. Because some small purchases in January 2009 were made from a third party (Citizens Gas Utility District) as stated in Response No. 2 of the Response to Initial Data Request of Commission Staff to Citipower, LLC in Case No. 2009-00080, Citipower was aware of the future probability to purchase gas from third parties. (See also the January 2009 purchase from Citizens as attached Citipower's May 29, 2009 Gas Cost Adjustment filing.)

Citipower deemed it prudent and reasonable to factor the Commissions comments questioning why Citipower used NYMEX strip rates (Case No. 2009-00080) into a review of the localized market definition of gas supply rates. While a NYMEX strip rate is a valid gauge of gas prices (See Response No. 4 hereinbelow), Citipower solicited the three closest non-affiliate producers to provide gas to the utility (See bid letters attached as Exhibit "A" hereto) in an attempt to further define the local (arm's length) market cost and to investigate third party supply. As the then current gas supply agreement expired May 31, 2009, Citipower further deemed it prudent and reasonable to secure a gas supply contract with a reputable producer ensuring a constant supply of gas in the event the affiliate production continued declining. Based on the replies (or lack thereof -- only Citizens responded) Citipower entered into a gas supply agreement with Citizens Gas Utility District (See Exhibit B). Thus, the Citizens Gas Utility District quote for the cost of gas being \$5.00 per mmbtu plus the actual cost of natural gas based on the Tennessee/Louisiana 800 Leg Index is a very accurate definition of the utility's cost of purchasing that gas and transporting it via pipeline to their system. While the prices quoted by Citizens Gas Utility District are higher than a NYMEX strip price it is an accurate definition of "market price" under the Kentucky regulatory guidelines. Therefore, Citipower respectfully submits that its actions are prudent, within the definition of "arm's length", and just and reasonable.

*Robert L. Brown III
1005 South Main Street
Corbin, Kentucky 40701
Attorney for Citipower, LLC*

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2. In Citipower's last GCR filing in Case No. 2008-00080¹, the approved Expected Gas Cost ("EGC") was based on a New York Mercantile Exchange ("NYMEX") natural gas 12-month strip rate for March 26, 2009 and one month of its expiring contract rate. Provide the rationale for basing the current EGC on the Citizens Gas price as opposed to a NYMEX natural gas 12-month strip rate.

RESPONSE: See Response No. 1 hereinabove.

*Robert L. Brown III
1005 South Main Street
Corbin, Kentucky 40701
Attorney for Citipower, LLC*

¹ Case No. 2009-0080 Purchased Gas Adjustment Filing of Citipower, LLC (Ky. PSC Mar. 31, 2009).

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3. Citipower's cover letter states that it changed its pricing mechanism because of the Commission's inquiry concerning the use of NYMEX pricing in the last case. In Case No. 2009-0080, Citipower was questioned about its use of a fixed 12-month strip rate that had expired. The Commission ultimately approved the use of a current 12-month strip rate. Explain why Citipower made a pricing mechanism change after the Commission approved the use of a 12-month NYMEX strip rate in its most recent GCR case.

RESPONSE: See Response No. 1 hereinabove.

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4. Does Citipower consider a NYMEX strip rate an acceptable estimate of an arm's length price of natural gas?

RESPONSE: KRS § 278.010 (25) states that "*Arm's length*" means the standard of conduct under which unrelated parties, each party acting in its own best interest, would negotiate and carry out a particular transaction. Based upon this statutory framework a NYMEX strip rate is certainly a recognized and valid method to establish gas cost estimates based upon a published rate. NYMEX rate has historically been used by Citipower because it is readily available and from a recognized and published market. Further, Citipower has historically not had the need to purchase third party gas so an index was a recognized and easily administered formula for gas costs. Thus, the qualified answer is: yes, a NYMEX strip rate an acceptable estimate of an arm's length price of natural gas. However, neither a NYMEX strip rate or the proposed Citizens Gas Utility District quote for the cost of gas being \$5.00 per mmbtu plus the actual cost of natural gas based on the Tennessee/Louisiana 800 Leg Index are mutually exclusive as to the definition of arm's length. Citipower states that under the circumstances the Citizen's gas quote is a more accurate definition of an arm's length definition of the McCreary County market rate for natural gas. (Also, see Answer No. 1 hereinabove.)

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5. After having used NYMEX strip rates in the past as a basis for calculating its quarterly EGC, explain whether Citipower now objects to the use of NYMEX for such calculation. If so, why?

RESPONSE: Objection is the incorrect standard to apply to the circumstances. Citipower proposes that the current conditions and the Kentucky regulatory guidelines dictate that the proposed Citizens Gas Utility District quote for the cost of gas being \$5.00 per mmbtu plus the actual cost of natural gas based on the Tennessee/Louisiana 800 Leg Index is more accurate than a NYMEX strip rate and is in fact the market rate. (See Answer No. 1 and No. 4 hereinabove.)

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6. Provide an EGC calculation for the quarter beginning July 1, 2009 based on the use of a NYMEX strip.

RESPONSE: 12 month strip for July 2009 is $\$5.39 \times 1.2 = \6.468

[http://www.richardsonbarr.com/IndustryResearch/News.aspx?a=detailed&ticker=\\$NGSI](http://www.richardsonbarr.com/IndustryResearch/News.aspx?a=detailed&ticker=$NGSI)

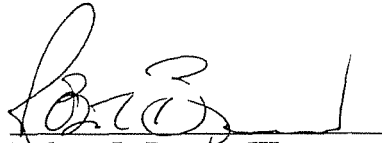
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Robert L. Brown III
1005 South Main Street
Corbin, Kentucky 40701
Telephone: (606) 528-3073
Attorney for Citipower, LLC

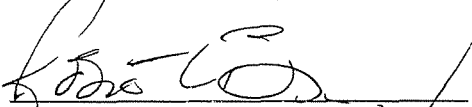
CERTIFICATE

I hereby certify that the above and foregoing was on the 16 day of June 2009, served by faxing and mailing the original and ten (10) true and exact copies of same, all postage prepaid, addressed for delivery to:

Mr. Jeff Derouen
Executive Director
COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
211 Sower Building
P. O. BOX 615
Frankfort, Kentucky 40602

And by mailing a true and correct copy to:

Hon. Jack Conway
Attorney General
1024 Capital Center Drive
Suite 200
Frankfort, Kentucky 40601-8204



Robert L. Brown III



April 16, 2009

TO: Glenn Jennings, Pres.
Delta Natural Gas Co., Inc.
3617 Lexington Rd.
Winchester, KY 40391

SUBJECT: Invitation to Bid Natural Gas Supply

Citipower LLC is a natural gas utility located in McCreary County, Kentucky. We are requesting companies with available natural gas supply to offer a bid price to supply Citipower's annual gas consumption requirements. Should you wish to supply gas to Citipower please respond to Citipower on or before May 31, 2009.

Citipower supply requirements:

- 1) Up to 90 MMcfg per annum (a detailed volume consumption history will be forwarded upon request)
- 2) To maintain pipeline pressure of not more than 30 psi and not less than 15 psi annually
- 3) Gas quality must be 1,000 mmbtu or greater
- 4) Gas price must be bid on an "Index plus" basis for a 5 year term
- 5) Gas contract to begin August 1, 2009 through August 1, 2014
- 6) Any expense associated with gas delivery (pipeline, metering etc.) shall be born solely by natural gas supplier

If you wish to make an offer to supply natural gas to Citipower LLC please submit your proposal to Citipower at 2122 Enterprise Rd., Greensboro, NC 27408, on or before May 31, 2008.

Thank you,

Daniel R. Forsberg, Pres.

2122 Enterprise Rd.
Greensboro, NC 27408-7004
(336) 379-0800
(336) 379-0881 Fax
www.CitiEnergyllc.com



April 16, 2009

Wayne Ferris, Pres.
Champ Oil
2000 S Stemmons Frwy #200
Lake Dallas, TX 75065

SUBJECT: Invitation to Bid Natural Gas Supply

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www.CitiEnergyllc.com

PIPELINE LEASE AND GAS SUPPLY AGREEMENT

(Tennessee)

THIS PIPELINE LEASE AND GAS SUPPLY AGREEMENT ("Agreement"), dated ^{MAA} April 29, 2009, but effective as of June 1, 2009 (the "Effective Date"), is between CITIPOWER, LLC, a North Carolina limited liability company ("Citipower"), and CITIZENS GAS UTILITY DISTRICT ("Citizens").

RECITALS

A. Citizens owns and operates an eight inch steel natural gas transmission pipeline (the "Transmission Line") that runs in a Northeast to Southwesterly direction to Helenwood, Tennessee.

B. Citipower owns and operates an 11.5 mile, four inch steel natural gas gathering pipeline ("Gathering Line") that runs generally North to South from the Kentucky/Tennessee State line to the tie-in to Citizens' Transmission Line.

C. Citipower owns and operates the Worley Compressor Site ("Compressor") on its Gathering Line located approximately 3,000 feet south of the Kentucky/Tennessee State Line on Isham Road, which Compressor is idle during certain times of the year.

D. Citizens owns and operates a plastic natural gas distribution system of pipelines that runs generally Northeast to Southwest from its tie-in to Citipower's Gathering Line which tie-in is located at Citizens's Piney Grove Station close to the Compressor.

E. During those times of the year during which the Compressor is idle, Citizens desires to lease from Citipower that portion of the four inch steel Gathering System that runs from the Worley Compressor Site to the Citizens eight inch Gathering Line in the Pine Hill area of Scott County, Tennessee (the "Leased Line") and effectively append the Leased Line to the front end of Citizens Distribution Line.

F. During those times of the year during which Citizens leases the Leased Line from Citipower, Citizens desires to provide peaking gas to Citipower pursuant to the terms and conditions of this Agreement.

AGREEMENT

For good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Citipower and Citizens hereby agree as follows:

1. Pipeline Lease: To facilitate the needs of each party, Citipower shall lease a portion of its gathering line to Citizens during certain times of the year as follows:

a. The Leased Line: Citipower hereby leases to Citizens, that portion of the Citipower's four inch steel pipeline defined as the "Leased Line" in Recital E of this agreement during all such times that Citipower is not using the pipeline to deliver local natural gas production from Kentucky for resale to Citizens at the interconnect of the Citizens eight inch Gathering Line in the Pine Hill are of Scott County Tennessee. Citizens use of the line is for the specific purpose of supplying gas to it's Tennessee Customers, supplying gas to Citipower, as provided for in paragraph 3 contained herein.

b. Operations: Subject to paragraph 1.c of the Agreement, Citizens shall operate the Leased Line in accordance with prudent pipeline operator standards, and shall use its best efforts to maintain the standards of operation historically provided by Citipower, except any necessary differences resulting from Citizens' use of the Leased Line as a distribution line as opposed to Citipower's use of the Leased Line as a gathering line.

c. Material Modifications: Citizens also agrees not to perform or cause to be performed any material modifications to the Leased Line. For the purposes of this Agreement, a material modification to the Leased Line is any modification, repair, maintenance or other physical change in the pipeline that would detrimentally impact Citipower's use of the Leased Line during the Term of this Agreement and thereafter. The definition of Material Modifications includes, without limitation, new taps or connections.

d. Repairs and Maintenance: Any repairs or maintenance of the pipeline shall be performed by Citizens employees at the cost of Citipower. For all emergency repairs, Citizens will submit an invoice to Citipower within 30 days of the repair and Citipower will pay Citizens within 30 days of receipt of the invoice. Emergency repair invoices shall not exceed the dollar amount of \$2,000.00. Any repair, either emergency or non-emergency, that is anticipated by Citizens to exceed \$2,000.00 will require pre-approval by Citipower prior to the repair being made. For repairs that exceed \$2,000.00 requiring pre-approval by Citipower, Citizens reserves the right to request Citipower to pay 50% of the repair cost prior to Citizens beginning the repair. The remaining 50% shall be paid for within 30 days of the date that Citipower receives the invoice from Citizens.

2. Title and Risk of Loss: The risk of loss and title to the gas in the Leased Line shall pass to Citizens during the months that the Leased Line is being leased and operated by Citizens. Transfer of operations shall include the accounting for any pipeline gas inventory differences.

3. Delivery Point: Citizens agrees to deliver to Citipower, a variable quantity of peaking gas ranging from 0 to 1,000 MMBTU per day. The delivery point ("Delivery Point") shall be the meter to be installed at the location of the Compressor. Provided, however, the total volumes delivered to Citipower, during any twelve (12) month period, shall not exceed 100,000 MMBTU's.

a. Peaking Meter and Regulator Station: Citizens shall, at its sole risk and expense, install such peaking meter and regulator station at the location of the Compressor after consultation with Citipower as to the actual location.

b. Meter Reading: Citizens shall designate and notify Citipower in advance of the day and time for all meter readings. Citipower shall have the right, but not the obligation to have a representative present for all such meter readings.

c. Meter Deposit: On or before October 1 of each year during the Term of this Agreement, and in lieu of a meter deposit, Citipower shall deliver to Citizens: (A) a bank letter of credit, or (B) a surety bond in an amount equal to: (i) twice the estimated volume of gas (estimated by Citipower) to be purchased during any given 30-day period multiplied by the cost of the gas set forth in Section 4 (a), (b), or (c) of this Agreement. The selection of the peaking gas cost used in the above calculation shall be at Citipower's sole discretion. If the actual amount of gas delivered in any given 30-period exceeds the amount estimated by Citipower by more than 50%, Citizens may request an increase in the amount of the bank letter of credit or surety bond at any time.

4. Cost of Gas: Citipower shall pay to Citizens, in addition to the cost of the gas ("Gas Price"), an amount equal to \$5.00 per MMBTU of gas delivered at the Delivery Point. In determining the above gas charge, the parties agree that Citipower shall be entitled to net the quantity of MMBTU's delivered to Citizens by Citipower against the quantity MMBTU's of gas delivered to Citipower by Citizens during any payment period. For the purpose of this Agreement, the Gas Price shall be defined exclusively by the following index: The Tennessee Louisiana Index, 800 Leg (as published in the Inside FERC Natural Gas Market Report)

5. Specifications: Gas delivered at the Delivery Point(s) shall be of pipeline quality, as required by Citizens, meeting the specifications of the receiving pipeline and acceptable to the receiving pipeline and shall be at adequate pressure to be received by the receiving pipeline without additional compression.

6. Liability and Indemnity Among the Parties: Each party agrees to indemnify, defend, and hold the other harmless from and against any liability, claim, or cause of action accruing while the gas is deemed to be in the indemnifying party's possession and control.

7. Insurance: Citipower and Citizens shall each maintain general liability insurance on the Leased Line for the months, respectively, that each party is in control and operation of the Leased Line, and shall name the other as an additional insured on each policy.

8. Term: The Term of this Agreement shall be from the Effective Date until the last day of March, 2014.

9. Warranty: Citipower and Citizens warrants to each other (a) that it has good and sufficient legal title to the gas delivered by it and the right to deliver same (b) that it has paid or will pay, or cause to be paid, all royalties, overriding royalties, production payments or similar charges, if applicable, against the gas delivered by such party, and (c) that the gas is merchantable and meets the specifications herein. Each party agrees to indemnify, defend, and hold the other harmless from and against any loss, claim, or demand by reason of any failure or breach of this warranty.

10. Audit: Each party and its duly authorized representatives shall have access to the accounting records and other documents maintained by the other party which relate to this Agreement and shall have the right to audit such records at any reasonable time or times once every two years and within twenty-four (24) months after the termination of this Agreement.

11. Financial Responsibility: In the event that a party (the "non-performing party") fails to make timely payment of any sums due hereunder or defaults in the performance of any obligation to the other party (the "performing party") under this Agreement, or otherwise gives the performing party reasonable grounds to doubt its continuing financial responsibility, the non-performing party shall provide such additional security for or assurances of the performance of its obligations as may be reasonably demanded in writing by the performing party. If such security for or assurance of continued performance is not provided within five (5) business days of the written demand therefore, the performing party may suspend its own performance under this contract until such security or assurance is provided, or may immediately terminate this Agreement upon ten (10) days advanced written notice. If either party makes a general assignment for the benefit of creditors, or files a petition or commences a case under any bankruptcy, reorganization, or similar law for the protection of creditors, or has any such petition filed or case commenced against it, then the other party may immediately terminate this Agreement upon written notice. Exercise by either party of any rights under this provision shall be without prejudice to any claim for damages or any other right under this Agreement or applicable law.

12. Taxes: All taxes (if any) relating to the natural gas shall be borne by the party having title to and possession of the gas at the point of levy or assessment.

13. Choice of Law: This Agreement and any dispute arising hereunder shall be governed by the laws of the State of Tennessee and each party consents to the exclusive jurisdiction of the courts in Tennessee.

14. Force Majeure: No failure or delay in performance, whether in whole or in part, by either party will be deemed to be a breach hereof (other than the obligation to pay money when due under this Agreement) when that failure or delay is occasioned by or due to a Force Majeure Event and is not contributed to by the affected party's negligence or willful misconduct. The party affected by a Force Majeure Event shall give written notice to the other party as soon as reasonably possible of the Force Majeure Event and its expected duration. Force Majeure as used herein means acts of God, vandalism, wars, civil unrest, rebellion, blockades, strikes, lightning, fires, floods, explosions, hurricanes, breakage of machinery or pipelines, failure of freezing of wells or pipelines, failure of third party pipelines to transport gas, and other causes not within the control of the party claiming Force Majeure. The affected party will use all commercially reasonable efforts to remedy each Force Majeure Event and resume full performance under this Agreement as soon as reasonably practicable, except that the settlement of strikes, lockouts or other labor disputes shall be entirely within the discretion of the affected party.

15. Notice: All billings, payments, statements, notices and communication shall be in writing and shall be delivered personally, by mail, by facsimile or by telegram to the address set forth below, unless changed by written notice:

For Notices and Communications to Citipower:

CITIPOWER, LLC
2122 Enterprise Road
Greensboro, NC 27408
ATTN: Adam Forsberg
Telephone: 336-379-0800 ext 106
Facsimile: 336-379-0581

For Notices and Communications to Citizens:

Citizens Gas Utility District
P. O. Box 820
Helenwood, TN 37755
Telephone: 423-589-4457
Facsimile: 423-589-5303

16. Alterations: No oral promises, agreements or warranties shall be deemed a part hereof, nor shall there be any alteration or amendment of this agreement, or waiver of any of its provision, unless the same be in writing and executed by both parties to this Agreement. This Agreement shall not be subject to modification or waiver by any course of performance, course of dealing or usage of trade.

17. Waiver: The waiver by either party of the breach of any provision hereof by the other party shall not be deemed to be a waiver of the breach of any other provision or provisions hereof or of any subsequent or continuing breach of such provision or provisions.

18. Successors: This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

19. Entirety of Agreement: There are no understandings, agreements or representations, express or implied, not specified in this Agreement between the parties.

20. Dispute Resolution: All disputes between the parties that arise from, relate to, or are in connection with this Agreement will be resolved by binding arbitration pursuant to the commercial dispute resolution rules of the American Arbitration Association, which will select an arbitrator with knowledge and experience relating to the production, gathering, transmission, marketing, and sale of natural gas. Neither party will be precluded by this Section from seeking injunctive or other equitable relief against the other party in any court of competent jurisdiction. All in-person arbitration proceedings will be conducted in Knoxville, Tennessee, at a site mutually agreed to by the parties.


21. Severance: If any provision of this Agreement is determined to be invalid, the parties intend that this Agreement will remain in effect without the application of the invalid provision.

22. Time: Time is of the essence in this Agreement.

IN WITNESS WHEREOF, the parties have executed two (2) originals of this Agreement as of the date first written above.

CITIPOWER, LLD

CITIZENS GAS UTILITY DISTRICT
OF SCOTT AND MORGAN COUNTIES

By: 
Daniel R. Forsberg
President
May 29, 2009

By: 
Freddy Bishop
CEO