

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF)	
KINGSBURY UTILITY CORPORATION FOR A)	CAUSE NO. 44590-U
NEW SCHEDULE OF RATES AND CHARGES)	
FOR WASTEWATER SERVICE)	
)	

**OUCC’S RESPONSE TO KINGSBURY UTILITY CORPORATION’S REQUEST
FOR RECONSIDERATION AND CLARIFICATION**

The Office of Utility Consumer Counselor, (“OUCC”) files this response to Kingsbury Utility Corporation’s (“Kingsbury”) Request for Reconsideration and Clarification:

(a) A final order is not a rescission of an interim order.

Kingsbury asserts the Commission’s final Phase II order improperly rescinds the interim order. Kingsbury’s Petition for Reconsideration and Clarification is based on the faulty premise that an interim order cannot be replaced by a final order without additional proceedings. By definition, an interim order grants temporary relief while a final order is pending. Blacks Law Dictionary defines “interim order” as “a temporary court decree that takes effect until something else occurs.” (Black’s Law Dictionary, Seventh Edition, p. 1123.) In this case, the Commission issued a final order addressing the Phase 2 issues raised by Kingsbury’s Phase II filing and the OUCC’s objection. The Commission did not rescind the interim order without due process required by IC 8-1-2-72. The effectiveness of the interim order, including the temporary rate relief it afforded, terminated because a final phase 2 order was issued.

Kingsbury asserts the Commission completed this improper rescission through its footnote stating “Although the Commission authorized interim implementation of Phase 2 rates in its

January 17, 2018 Order, KUC has not implemented those rates and may not do so now.” (Final Phase II Order, p. 4, footnote 2)¹ The footnote does not create an improper rescission but merely memorializes the fact that Kingsbury did not avail itself of the interim rates it was authorized to implement pursuant to the interim order, and it may not do so now because a final order has now been issued.

Kingsbury also suggests the relief granted by the Interim Order was permanent because “the Interim Order specifically found and concluded that: ‘the interim Phase 2 rates are reasonable and in compliance with the Phase 1 Order.’(Interim Order, at 2).” (Petition for Reconsideration, p. 5.) Such provision can and should be construed as a determination that the interim increase was consistent with the Phase I order for purposes of allowing interim rates because it was undisputed that the projects included in the interim rates were authorized projects, were in service, and did not exceed authorized amounts.

A final order is not a rescission of an interim order. Kingsbury can have no reasonable expectation that any relief granted by the interim order should be considered permanent. It was not improper for the Commission to replace its interim Phase II order with its final Phase II order.

(b) The May 31, 2018 Meeting is not a basis to reconsider the findings of the Final Phase II Order.

Kingsbury’s “second area of serious concern” is “the apparent unnoticed, post-record May 31, 2018 meeting and vague and unidentified information considered *after the close of the procedural record.*” (Italics included in Kingsbury’s Petition for Reconsideration.) Given that this is a small utility rate case, and there is no hearing in which evidence will be received, it is unclear when the record can be considered to have closed. In any case, if the meeting had not occurred,

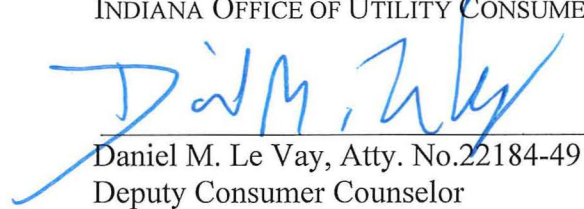
¹ The notation was appended to the statement that “Because KUC has not completed installation of the influent flow meter, its request to implement Phase 2 rates at this time is denied.” (Final Phase II order, p. 4.)

the result would be the same – there was not “sufficient evidence” to convince the Commission that its decision in the Phase 1 Order should be altered. (Final Phase II order, p. 4.)

Kingsbury’s request for reconsideration should be denied.

Respectfully Submitted,

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR



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Deputy Consumer Counselor

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing *Office of Utility Consumer Counselor Response to Kingsbury Utility Corporation's Request for Reconsideration and Clarification* has been served upon the following counsel of record in the captioned proceeding by electronic service on August 6, 2018.

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