

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

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PETITION OF CWA AUTHORITY, INC. FOR)
APPROVAL PURSUANT TO INDIANA CODE) CAUSE NO. 44990
SECTION 8-1-31.5-12 TO IMPLEMENT A RATE)
SCHEDULE TO ESTABLISH A SYSTEM) APPROVED:
INTEGRITY ADJUSTMENT.) DEC 28 2017

ORDER OF THE COMMISSION

Presiding Officers:

Sarah E. Freeman, Commissioner

Loraine L. Seyfried, Chief Administrative Law Judge

On September 28, 2017, CWA Authority, Inc. ("CWA" or Petitioner") filed a Verified Petition with the Indiana Utility Regulatory Commission ("Commission") pursuant to Ind. Code § 8-1-31.5-12 seeking approval to implement a system integrity adjustment ("SIA").

On October 30, 2017, the Indiana Office of Utility Consumer Counselor ("OUCC") filed its report in accordance with Ind. Code § 8-1-31.5-12(b). On November 6, 2017, CWA filed rebuttal testimony responding to the OUCC's report. On November 14, 2017, CWA filed the publisher's affidavit showing proof of publication of the legal notice provided in this Cause and its responses to a November 9, 2017 Docket Entry.

The Commission held an evidentiary hearing on November 16, 2017, at 9:30 a.m. in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. CWA and the OUCC appeared and participated in the hearing. At the hearing, the prefiled evidence of Petitioner was offered and admitted without objection, the prefiled evidence of the OUCC was offered and admitted over objection to portions of the prefiled testimony, and the witnesses were cross-examined.

Based on the applicable law and the evidence of record, the Commission now finds:

1. Notice and Jurisdiction. Notice of the evidentiary hearing in this Cause was given and published by the Commission as required by law. Notice of the filing of the Verified Petition was also published by CWA on October 9, 2017.

Petitioner is an Indiana nonprofit corporation and an instrumentality of the Board of Directors for Utilities of the Department of Public Utilities of the City of Indianapolis d/b/a Citizens Energy Group ("Citizens Energy Group") created pursuant to an Interlocal Cooperation Agreement entered into by the City of Indianapolis, the Sanitary District of the City of Indianapolis, and Citizens Energy Group in accordance with the Interlocal Cooperation Act, Ind. Code ch. 36-1-7. Through the Interlocal Cooperation Agreement, Citizens Energy Group vested CWA with its statutory powers under Ind. Code § 8-1-11.1-3(c)(9) to adopt rates and charges and terms and conditions for the provision of wastewater utility service. Accordingly, the Commission has authority to approve CWA's rules and rates for utility service. In addition, as a nonprofit

corporation providing wastewater service and under the Commission's jurisdiction for approval of rates and charges, CWA is an "eligible utility" as that term is defined in Ind. Code § 8-1-31.5-7. Therefore, the Commission has jurisdiction over CWA and the subject matter of this proceeding.

2. **Petitioner's Characteristics.** CWA provides wastewater collection and treatment service to approximately 230,000 households in Marion County, Indiana, and wastewater treatment services to surrounding communities. Pursuant to a Management and Operating Agreement approved by the Commission in Cause No. 43936, Citizens Energy Group provides management and operational services necessary and desirable for the operation of the wastewater utility owned by CWA.

3. **Relief Requested.** In its Verified Petition, CWA requests the Commission determine that CWA's proposed SIA of \$6,139,673 and corresponding SIA 1 Rate of \$0.2598 per 1,000 gallons are properly calculated. CWA also requests approval of and authorization to implement the rate schedules attached to the Verified Petition establishing the SIA to be recovered from CWA's non-industrial customers.

4. **Evidence Presented.**

A. **CWA's Verified Petition.** In support of its Verified Petition, CWA provided five attachments. Attachment 1 contains a schedule detailing the calculation of CWA's proposed SIA and SIA rate. Attachments 2 through 4 contain a new Rider B to its tariff and revised rate schedules. Attachment 5 contains a certification executed by Jeffrey A. Willman, Vice President of CWA, certifying that CWA will use any adjustment revenues for eligible infrastructure improvements.

The attachments to the Verified Petition reflect that CWA's authorized revenues from Cause No. 44685 are \$267,685,589. For the 12-month period ending July 31, 2017, CWA's actual revenues were \$255,800,310, which resulted in a cumulative deficit of \$11,885,279. CWA's Verified Petition indicates that a comparison of the cumulative deficit amount with its one-time system integrity collar amount of \$5,353,712, establishes that the system integrity collar has been satisfied on a cumulative annual basis following the effective date of the Commission's July 18, 2016 Order in Cause No. 44685 ("Rate Order"). The Verified Petition provides that CWA's adjustment amount is \$6,531,567. Therefore, CWA proposed an SIA of \$6,139,673, which does not exceed 94% of the adjustment amount. Finally, the Verified Petition indicates that CWA's proposed SIA 1 Rate is \$0.2598 per 1,000 gallons, which was determined by dividing the SIA by CWA's budgeted non-industrial volumes.

B. **OUCC's Case-in-Chief.** Margaret A. Stull, Senior Utility Analyst in the Water/Wastewater Division of the OUCC, provided the report of the OUCC's examination of CWA's information to confirm proper calculation of the proposed SIA as required by Ind. Code § 8-1-31.5-12(b). Ms. Stull provided an overview of the statutory requirements for SIAs in Ind. Code ch. 8-1-31.5 ("SIA Statute"). She noted that under Ind. Code § 8-1-31.5-11(b), only CWA's non-industrial customers will be charged an SIA, including only two of its satellite customers. She said the burden for this adjustment will fall primarily on CWA's residential and commercial customers, constituting a departure from the cost-based rates set in CWA's last general rate case.

Ms. Stull explained the three steps required to calculate an SIA. She stated that depending

on whether authorized revenues are less than or greater than actual revenues, an SIA could result in a credit or a charge to customers. However, because utilities are not required to file an SIA, she said the OUCC expects utilities will only petition for an SIA when there is a deficit in actual revenues compared to authorized revenues.

Ms. Stull disagreed with the amount of authorized revenues that CWA used in its SIA calculation of \$267,685,589. She said that CWA used a combination of the amount authorized in the Commission's Rate Order and the amount determined in its Phase 1 debt service true-up filed on October 21, 2016. Consequently, CWA's authorized revenue calculation includes three months of revenues at the higher rate authorized in the Rate Order and nine months of revenues as adjusted to reflect actual debt expense. She said that because the tried-up amount reflects CWA's actual revenue requirement, the authorized revenues should be \$267,012,483.

Ms. Stull testified that her authorized revenue calculation does not understate CWA's SIA because the revenue requirement authorized in CWA's tried-up rates represent its actual debt service costs, which it needs to recover through rates to meet its expenses. She said the figure for debt service included in CWA's initial rates was only a temporary estimate until the actual cost was known. Based on an authorized revenues amount of \$267,012,483, Ms. Stull recommended an SIA rate of \$0.2335 per 1,000 gallons based on an SIA of \$5,519,608.

Ms. Stull also expressed concern about the expedited nature of SIA filings, the lack of workpapers or other supporting documentation in CWA's filing, and the OUCC's need to obtain such information through the discovery process. She identified additional information that should be provided in future SIA filings, including: a detailed trial balance; workpapers showing monthly revenues, consumption and billing counts by customer class for each month of the 12-month period; and to the extent applicable, the budget period used, supporting documentation for the budget, a copy of the financial statements for the budget period, and any operating revenue budget assumptions.

She explained that a detailed trial balance will confirm the utility's records balance; provide reasonable assurance that operating revenues have been properly recorded; verify that all revenue accounts have been included in the calculation; and show whether any operating revenues have been deferred and excluded from the calculation. She stated that operating revenue information will provide a reality check for a utility's inputs into its calculation and the reasonableness of its claims regarding deficit revenues. With respect to budget information, she said such information allows the OUCC to determine whether the budgeted data is appropriate to use in the calculation.

Ms. Stull also discussed additional information that the OUCC requested from CWA. She stated that CWA objected to providing information regarding the cause of CWA's inability to recover its revenue requirement, the average winter water usage for the past three years, and the loss of large industrial or commercial customers. She said this information is helpful to understand what is driving the revenue shortfall.

Finally, Ms. Stull addressed CWA's certification that adjustment revenues will be used for eligible infrastructure improvements. She said that in addition to the certification, the utility should identify the capital projects it has been unable to complete due to its operating revenue deficit and the projects it will fund with adjustment revenues received. She explained that it is important to verify that revenues from the SIA are used in accordance with the certification.

C. CWA's Rebuttal. LaTona S. Prentice, Petitioner's Vice President, Regulatory & External Affairs, responded to the OUCC's report. She disagreed with the OUCC that CWA's proposed SIA is a departure from cost-based rates. She noted that the exclusion of industrial customers is an explicit provision of the SIA Statute and said that Ms. Stull's characterization of the participation of only two satellite customers in the SIA as a departure from cost-based rates was inconsistent with the Commission's Order in Cause No. 44685-S1.

Ms. Prentice testified that the OUCC's testimony implies the SIA will only be a charge. She disagreed with that implication, but agreed with the OUCC's reference to Ind. Code § 8-1-31.5-3(2) that the SIA may be a recovery from or credit to customers. She discussed how the requirement regarding subsequent SIA filings in Ind. Code § 8-1-31.5-12(d) puts a utility at risk for over-collecting and shows that the General Assembly expected this to be a two-way street.

Ms. Prentice generally agreed with the method used by the OUCC to calculate the SIA, but disagreed with the OUCC's recommended authorized revenues. She stated that using only the adjusted revenues in the Phase 1 debt service true-up to calculate the authorized revenues is flawed because it disregards the rates that the Commission actually approved and were effective during the months of August through October 2016. Ms. Prentice testified that the General Assembly designed the SIA to address the difference between revenues that were authorized for recovery and actual revenues, with no mention as to what costs the revenues are recovering.

Subject to a few exceptions, Ms. Prentice disagreed with the OUCC's recommendations for additional supporting documentation and workpapers. She stated the only accounts contained in a detailed trial balance that are relevant for purposes of determining the proper SIA calculation are revenue accounts. She stated that because the SIA is only about revenues, the other accounts included in a detailed trial balance are not necessary. She disagreed that a detailed trial balance is necessary to verify the accuracy of Petitioner's books and records because CWA's books and records conform to generally accepted accounting principles and are subject to annual audit and interim quarterly reviews by Deloitte & Touche LLP. In addition, of the operating revenue information identified by Ms. Stull, Ms. Prentice said only the monthly revenues are relevant to the SIA calculation. The remaining items are typically used for a variance analysis, which is outside the scope of the SIA Statute. In terms of the budget information requested by the OUCC, Ms. Prentice noted that Petitioner provided the budget period used and the monthly budgeted volumes by class for each of the non-industrial classes.

With respect to the OUCC's concern that Petitioner has not addressed the primary cause of its revenue shortfall, Ms. Prentice stated that the cause of the shortfall is not relevant to determining the SIA, not required by the SIA Statute, or needed to confirm CWA's SIA was properly calculated. She also testified that the OUCC's capital project recommendations are inconsistent with the SIA Statute, which does not require identification of eligible infrastructure improvements that would not be completed as result of a cumulative deficit or that will be completed as a result of the adjustment revenues.

5. Commission Discussion and Findings. Petitioner seeks approval to implement a new rate schedule establishing an SIA. This is the first request the Commission has received under the SIA Statute.

A. **SIA Statute.** The SIA Statute sets forth the calculation to be used in determining the amount of the SIA that a petitioning utility is permitted to collect. A utility first compares its authorized revenues to its actual revenues. *See* Ind. Code §§ 8-1-31.5-5 and -2. The difference between the authorized revenues and actual revenues produces an adjustment amount. The adjustment amount is limited by the system integrity collar, which is equal to 2% of the authorized revenues. *See* Ind. Code §§ 8-1-31.5-3 and -10. A utility is permitted to recover from its non-industrial customers 94% of the adjustment amount as an SIA. Ind. Code § 8-1-31.5-11.

The SIA Statute establishes an expedited procedural schedule for SIA cases. Pursuant to Ind. Code § 8-1-31.5-12(b), the OUCC may examine information of a utility seeking approval of an SIA to confirm proper calculation of the proposed SIA. The OUCC may submit a report of the examination to the Commission no later than 30 days after the petition is filed. The Commission is required to hold a hearing on the petition and issue its order not later than 90 days after the petition is filed. Ind. Code § 8-1-31.5-12(c).

B. **Petitioner's Proposed SIA.** Attachment 1 to the Verified Petition sets forth CWA's calculation of its SIA, showing that as of the 12 months ending July 31, 2017, CWA had under recovered its authorized revenues by \$11,885,279. After accounting for the 2% system integrity collar and the 94% statutory limitation, CWA proposed an SIA of \$6,139,673. In accordance with the requirement in Ind. Code § 8-1-31.5-11(b) that an SIA be allocated only to the non-industrial rate classes, Petitioner divided its proposed SIA by the budgeted volumes for its non-industrial customers to calculate a rate of \$0.2598 per 1,000 gallons. Petitioner requests approval of a new Rider B to its tariff, which sets forth the \$0.2598 volumetric SIA rate as well as the applicable monthly SIA rate for unmetered non-industrial customers.

The OUCC proposed an SIA of \$5,519,608 and calculated an SIA rate of \$0.2335 per 1,000 gallons. The OUCC and Petitioner used the same budgeted volumes to calculate their respective SIA rates, but the OUCC used a different authorized revenues amount to calculate its proposed SIA. Although the 12-month period Petitioner used to calculate its proposed SIA is August 2016 through July 2017, the OUCC used an authorized revenues amount based on annual operating revenues that were not approved until October 2016 and did not become effective until November 2016. The OUCC argued that the rates authorized in the Rate Order should be disregarded because they were based on estimated debt service requirements.

The SIA Statute defines authorized revenues to mean, "the annual operating revenues of an eligible utility approved by the commission for *a twelve (12) month period* in the eligible utility's most recent general rate case." Ind. Code § 8-1-31.5-5 (emphasis added). The SIA Statute does not define the 12-month period after a rate case that a utility must use in calculating a proposed SIA. CWA chose the 12-month period of August 2016 through July 2017. The Rate Order was issued July 18, 2016, and authorized total operating revenues of \$269,704,907, which were in effect August through October 2016. CWA's annual operating revenues for the remaining nine months of the 12-month period of August 2016 through July 2017 were approved by the Commission based on Petitioner's Phase 1 debt service true-up filed with the Commission on October 21, 2016. Therefore, under a plain reading of the statute, the annual operating revenues approved by the Commission in CWA's most recent rate case for the period of August 2016 through July 2017 consists of three months of annual revenue approved by the Rate Order and nine months of annual revenue approved based on the debt service true-up filing.

Based on the evidence of record and for the foregoing reasons, we find that Petitioner's proposed SIA is properly calculated. We also agree with the methodology employed by both Petitioner and the OUCC to use budgeted non-industrial volumes to calculate the SIA rate. Therefore, Petitioner's proposed Rider B as well as the proposed changes to Sewer Rate Nos. 1 and 4 shown on Attachments 3 and 4 to CWA's Verified Petition are approved.

C. **Other Issues.** The OUCC made a number of recommendations regarding workpapers and other supporting documentation it asserts an eligible utility should be required to file with a petition seeking approval of an SIA. Although CWA disagreed with the majority of the OUCC's requests for additional information, it did agree to file with its petition in future SIA filings: (1) the revenue accounts in the detailed trial balance for the actual revenues; (2) the monthly revenues included in the actual revenues; and (3) to the extent budgeted non-industrial volumes are used in the SIA rate calculation, the budget period used and the monthly budgeted non-industrial volumes by class for each of the non-industrial classes.

The SIA Statute establishes the review to be performed by the OUCC. It provides that the OUCC may examine a utility's information "to confirm proper calculation of the proposed [SIA]." Ind. Code § 8-1-31.5-12(b)(1). We agree with the OUCC that CWA, at a minimum, should have filed contemporaneously with its Verified Petition the workpapers and other documents that would have supported its calculations as well as testimony explaining its calculations and the basis for those calculations. CWA, as the petitioning utility, bears the burden of proof and therefore must file sufficient evidentiary and factual support for the OUCC to review, and the Commission to approve, the calculation of Petitioner's requested SIA. In addition, because of the statutorily required expedited review, it is even more imperative that the supporting information be provided with the filing of the petition.

However, we are hesitant and therefore decline at this time, to mandate that specific information, workpapers, or testimony be filed with a petition for an SIA because the information necessary to support a filing will depend on the facts presented and the relief requested in each proceeding. We encourage CWA to work with the OUCC to identify appropriate documentation, such as those CWA agreed to provide in future filings, that will allow the OUCC to confirm that any proposed SIA is properly calculated. In addition, while we share the OUCC's concern that a utility with a significant revenue shortfall should strive to understand the cause and take steps to appropriately address the issue, we fail to understand how this information aids the OUCC in confirming whether the SIA has been appropriately calculated, which is all that the SIA Statute requires.

Finally, the OUCC recommended that CWA identify what eligible infrastructure projects were not completed due to the cumulative deficit and what projects would be completed as a result of the SIA. The OUCC asserted that such information is necessary to verify the SIA will be used in accordance with the certification required by Ind. Code § 8-1-31.5-12(a) and will help avoid the potential for double recovery of such projects under Ind. Code ch. 8-1-31. CWA argues that nothing in the SIA Statute requires a utility to provide such information. Instead, a utility is simply required to certify it will use any adjustment revenues for eligible infrastructure projects.

While we agree that CWA's certification satisfies the statutory requirements and have previously acknowledged that "[t]he law has long recognized that good faith is to be presumed on the part of the managers of a public utility," CWA's certification is a rebuttable presumption.

Indiana Michigan Power Co., Cause No. 39314 at 5 (IURC Nov. 12, 1993). As Ms. Prentice explained at the hearing, CWA will spend approximately \$33 million each year on eligible infrastructure improvements during the years that CWA's proposed SIA will be in effect. Tr. at 37. Ms. Prentice also indicated CWA fully expects to use all SIA revenues for eligible infrastructure improvements because the amount of the proposed SIA adjustment is for approximately \$6 million, which is less than CWA's anticipated eligible infrastructure improvement expenditures. Nevertheless, Ms. Prentice stated that Petitioner would be willing to file a notice with the Commission each year the SIA is in effect when the amount CWA spends on eligible infrastructure improvements exceeds the amount of adjustment revenues collected as a result of the SIA. While not specifically required by the SIA Statute, we accept CWA's proposal and direct CWA to file such notices as compliance filings in this Cause.

D. Future SIA Filings. Petitioner is authorized to collect the SIA approved in this Order until the earlier of 48 months after the date of this Order or the date on which the Commission issues an Order in Petitioner's next general rate case proceeding. For each year that the SIA approved in this Order remains in effect, CWA shall file a petition in accordance with Ind. Code § 8-1-31.5-13 for a change in its adjustment amount no later than October 28. CWA shall file these future SIA filings as an SIA subdocket under this Cause, e.g., Cause No. 44990 SIA X. To the extent an SIA is in effect for CWA for a 12-month period, CWA shall include the reconciliation of adjustment amounts and adjustment revenues required by Ind. Code § 8-1-31.5-15 in each petition filed under Ind. Code § 8-1-31.5-13. Once the SIA is terminated, CWA shall file within 60 days a reconciliation for any unreconciled SIA.

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

1. Petitioner's proposed SIA is properly calculated and approved.
2. Petitioner's proposed Rider B and the revised rate schedules for Petitioner's Sewer Rate No. 1 and Sewer Rate No. 4 attached to the Verified Petition are approved.
3. In accordance with Finding Paragraph 5.D. above, Petitioner is authorized to collect the SIA approved herein until the earlier of the following:
 - a. 48 months after the date of this Order.
 - b. The date on which the Commission issues an Order in Petitioner's next general rate case proceeding.
4. For each year that the SIA approved herein remains in effect, CWA shall file a petition in accordance with Ind. Code § 8-1-31.5-13 for a change in its adjustment amount no later than October 28. CWA shall file these future SIA filings as an SIA subdocket under this Cause, e.g., Cause No. 44990 SIA X. To the extent an SIA is in effect for CWA for a 12-month period, CWA shall include the reconciliation of adjustment amounts and adjustment revenues required by Ind. Code § 8-1-31.5-15 in each petition filed under Ind. Code § 8-1-31.5-13. Petitioner shall also file contemporaneously with each petition the workpapers and documents necessary to support its calculations, testimony explaining the calculations and the basis for those calculations, and a statement as to whether the amount spent on eligible infrastructure improvements exceeds the

amount of adjustment revenues collected as a result of the SIA during the applicable 12-month period.

5. Once the SIA is terminated, Petitioner shall file within 60 days a reconciliation for any unreconciled SIA.

6. In accordance with Ind. Code § 8-1-2-70, Petitioner shall pay the following itemized charges within 20 days from the date of the Order into the Commission public utility fund account described in Ind. Code § 8-1-6-2, through the Secretary of the Commission, as well as any additional costs that were incurred in connection with this Cause:

Commission Charges:	\$ 1,335.40
OUCG Charges:	\$ 5,306.52
Legal Advertising Charges:	\$ 44.19
Total:	\$ 6,686.11

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

ATTERHOLT, FREEMAN, HUSTON, WEBER, AND ZIEGNER CONCUR:

APPROVED: DEC 28 2017

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



Mary M. Becerra
Secretary of the Commission