

BEFORE THE
INDIANA UTILITY REGULATORY COMMISSION

PETITION OF CWA AUTHORITY, INC. FOR (1))
AUTHORITY TO INCREASE ITS RATES AND)
CHARGES FOR WASTEWATER UTILITY SERVICE)
IN THREE PHASES AND APPROVAL OF NEW)
SCHEDULES OF RATES AND CHARGES)
APPLICABLE THERETO; (2) APPROVAL OF A) CAUSE NO. 45151
LOW-INCOME CUSTOMER ASSISTANCE)
PROGRAM; AND (3) APPROVAL OF CERTAIN)
CHANGES TO ITS GENERAL TERMS AND)
CONDITIONS FOR WASTEWATER SERVICE.)

**CWA AUTHORITY, INC.’S REPLY TO THE INDIANA OFFICE OF UTILITY
CONSUMER COUNSELOR’S PROPOSED ORDER LANGUAGE**

CWA Authority, Inc. (“Petitioner” or “CWA”), by counsel, submits the following Reply to the Indiana Office of Utility Consumer Counselor’s *Proposed Order Language on Ownership, Maintenance and Replacement of Grinder Pumps Installed in the Septic Tank Elimination Program* (“OUCC’s Proposed Order”). For the reasons set forth below, CWA respectfully submits the Commission should reject the suggested summary of evidence and proposed discussion and findings set forth in the OUCC’s Proposed Order. Instead, the Commission should adopt the Settling Parties’ agreed summary of evidence and Petitioner’s discussion and findings relating to the contested grinder pump issue.

I. INTRODUCTION AND SUMMARY.

In its last rate case, Cause No. 44685, CWA informed the Commission that it was moving construction of STEP projects to low-pressure sewer systems (“LPSS”) with grinder pumps. Pet. Exh. 14 at 22. No party to Cause No. 44685: (i) opposed CWA’s move to LPSS, (ii) recommended CWA be responsible for repairing and replacing homeowners’ grinder pumps in perpetuity, or (iii) proposed any changes to Petitioner’s Terms and Conditions to facilitate such a

policy. Since implementation in 2016, the LPSS solution has resulted in a significant reduction to all costs for new STEP customers, including previous costs totally borne by STEP customers (i.e. off-right of way costs). These cost reductions have also contributed significant savings to Petitioner's ratepayers. As a result, voluntary connections to STEP projects have increased to an average over 98% since 2016 (*i.e.*, LPSS), as compared to "40 to 50 percent prior to 2016." Pet. Exh. No. 25. Since 2016, CWA has connected approximately 980 homeowners to LPSS. OUCC Exh. CX-5.

The OUCC received comments from "a dozen customers" who "opposed having to pay to own, operate, and replace the grinder pumps" or "expressed a preference for the gravity system." OUCC's Proposed Order at 4. While CWA is sensitive to these concerns raised by some customers, the relatively few comments (approximately 1% of connected STEP customers) do not justify an overhaul of what has been a successful STEP project policy for homeowners and ratepayers.

As further discussed below, the OUCC's Proposed Order: (i) restates the OUCC's own recommendation in apparent acknowledgement that it is at least partially unworkable as originally proposed; (ii) mischaracterizes the policies of other utilities using LPSS, which if properly described show the OUCC's recommended policy would be unique, if adopted; (iii) recognizes changes would need to be made to Petitioner's Terms and Conditions to implement the OUCC's proposal; (iv) suggests the Commission ignore the plain language of 170 IAC 8.5-3-7 and find the regulation is outdated, in an effort to comport the OUCC's proposal with Commission policy; and (v) relies on inaccurate or hypothetical worst case scenarios¹

¹ As discussed below, this claim was refuted: (i) in Mr. Parks' attachments, (ii) in Mr. Jacob's rebuttal, and (iii) during cross-examination of Mr. Jacob. Moreover, one wonders why the OUCC (or any party) would support the use of LPSS if customers were required to leave their home during a power outage.

contradicted by record evidence (such as the false claim that LPSS customers must evacuate their homes during a power outage).

The evolving positions and arguments in the OUCC's Proposed Order reveal that the OUCC is constructing its recommended policy as it goes along, without fully considering the consequences of implementing what it has advocated. The Commission should not require Petitioner to modify its practices and interrupt or eliminate a program that has been financially beneficial to STEP homeowners and ratepayers alike without the required substantial evidence of record.

II. THE OUCC'S PROPOSED ORDER MISCHARACTERIZES ITS OWN RECOMMENDATION.

OUCC witness Parks recommended "the Commission provide that CWA retain ownership of the grinder pumps it has installed and use its maintenance staff to provide emergency response and repairs for the grinder pumps and ongoing pump replacements when they reach the end of their service lives." Public's Exh. 4 at 48 (emphasis added). On page 1 of the OUCC's Proposed Order, however, the OUCC would have the Commission mischaracterize its own witness's recommendation by omitting the proposal that CWA retain ownership of the grinder pumps: "[t]he OUCC did not oppose CWA's practice of implementing the STEP through predominantly through low pressure systems, but *the OUCC insisted that in such case, CWA should retain responsibility for emergency repairs, grinder pump maintenance and grinder pump replacement.*" OUCC's Proposed Order at 1 (emphasis added).

The OUCC's attempt to use its Proposed Order to modify the testimony and recommendation of its own witness is improper. While no explanation is offered, the proposed revision suggests the OUCC recognizes a Commission Order directing CWA to "retain

ownership” of grinder pumps already owned by homeowners pursuant to a written agreement² is problematic – if not unachievable.

III. THE OUCC’S NEW SUMMARY OF EVIDENCE IS MISLEADING WITH RESPECT TO THE PRACTICES OF OTHER UTILITIES USING LPSS.

It is unclear whether the five-page summary of evidence presented in the OUCC’s Proposed Order is intended to supplant or just supplement the summary of evidence agreed upon by the Settling Parties in their Joint Proposed Order. Regardless, the OUCC’s new summary of evidence reads as if the Commission agrees with the OUCC’s position. It is an inappropriate supplement or replacement to the version of the evidentiary summary the Settling Parties agreed to. The OUCC’s new summary includes a three-page nearly verbatim recitation of Mr. Parks’ testimony and a selective summary of Petitioner’s evidence using dismissive phrases to describe Mr. Jacob’s testimony like: “Mr. Jacob *attempted to* dismiss Mr. Parks’ contention. . . .” OUCC’s Proposed Order at 4 (emphasis added). Language suggesting the Commission is promoting a particular party’s position is inappropriate in what should be a neutral summary of evidence.

The OUCC also includes in its summary of Mr. Parks’ testimony, the following statement he admitted was inaccurate on cross-examination:

Mr. Parks identified some other utilities that retain operational and financial responsibility for emergency breakdowns and replacements of the grinder pumps instead of homeowners. . . . He said these utilities also rehabilitate and replace the grinder pumps at the utility’s cost which is recovered through sewer rates. OUCC’s Proposed Order at 3.

During cross-examination, Mr. Parks acknowledged that some homeowners served by the utilities he had identified have financial responsibility for repairs and maintenance. Specifically, LPSS homeowners in Brentwood, Tennessee pay: a \$1,900 upfront “grinder pump maintenance

² See, STEP Enrollment Agreement, Public’s Attachment JTP-2 at 1.

and replacement fee,” a \$5,000 tap fee and call out charges for grinder pump maintenance. Tr. at 118-119. Mr. Parks conceded:

- Q. So the homeowner has some financial responsibility for breakdowns and repairs; correct?
- A. That’s right. . . .

Tr. at 119.

Public’s Attachment JTP-6 reveals that First Utility District of Knox County, Tennessee also does not recover grinder pump maintenance costs “through sewer rates,” rather it adds a “\$9 maintenance fee” to the monthly bills of customers served by LPSS. Mr. Parks also provided what he admitted on cross-examination “may well be” a portion of a request for proposals (“RFP”) for a contractor to provide maintenance service³ to a 26 home neighborhood with grinder pumps in Kitsap County, Washington. Tr. at 122. That RFP indicates homeowners in the neighborhood pay “grinder pump sewer charges” covering “preventative maintenance, repair of normal wear and tear, and 24/7 emergency stand by response capabilities.” Public’s Attachment JTP-6 at 6.

The OUCC’s Proposed Order also excludes contrary evidence in its abbreviated summary of Petitioner’s evidence. For instance, the record reflects that the City of Fort Wayne, Indiana and the Metropolitan St. Louis Sewer District do not assume the homeowners’ obligation to maintain and replace grinder pumps. Pet. Exh. 25.

The OUCC’s new summary of evidence conceals the fact the record evidence shows that adopting a policy under which CWA would “rehabilitate and replace the grinder pumps *at the utility’s cost which is recovered through sewer rates*” would put CWA in a minority of utilities

³ Q. So would you agree, then, that it’s possible that what you have here is – attached to your testimony is not a policy but a portion of an RFP?

A. That may well be.
(Tr. at 122).

that even use LPSS – if not make it unique.⁴ Of the other utilities that do utilize LPSS for homes, they either do not assume these responsibilities on behalf of homeowners or they charge the homeowners for the services. The cost is not subsidized by other ratepayers and “recovered through sewer rates,” as the OUCC recommends.

IV. THE OUCC CONCEDES CHANGES WOULD NEED TO BE MADE TO PETITIONER’S TERMS AND CONDITIONS TO IMPLEMENT ITS RECOMMENDED POLICY, BUT IGNORES OTHER NECESSARY CHANGES.

The OUCC admits revisions to Petitioner’s Terms and Conditions would be required to implement its recommended changes to the STEP program. The OUCC does not propose any revisions, but suggests the Commission should find Petitioner could “adopt a rule” or “draft appropriate rules,” including:

- “CWA may adopt a rule a [to compel access to customer property] subject to approval of the Commission. We note the Commission is approving rule changes proposed by CWA in this very Cause.” (OUCC’s Proposed Order at 9.)
- “CWA can draft appropriate rules to place requirements on the operation of low pressure systems and grinder pumps CWA maintains. Such rules can establish appropriate incentives.” (*Id.*)

The OUCC’s Proposed Order likewise concedes CWA would need to obtain a license or easement to access customer property like that obtained by CWA’s contractor when it installed the LPSS. However, the OUCC would have the Commission speculate: “CWA should be able to procure a similar license from the customer [as the one its contractor obtained to install the grinder pumps] in exchange for the customer receiving maintenance, repair, and replacement of the grinder pump.” (*Id.*) Obtaining a permanent license or easement from approximately one

⁴ The document the OUCC provided with respect to the Athens Utility Board does not disclose how maintenance and replacement are paid for or whether the utility imposes call-out fees. The information relating to the Town of Leesburg, Indiana reflects that at a minimum, the Town assesses fines for misuse of LPSS facilities.

thousand existing STEP homeowners, as well as the thousands of STEP homeowners who may connect in the future, will not be as simple or inexpensive as the OUCC speculates.

In lieu of acknowledging other changes that would be necessary to implement its proposed policy, the OUCC asks the Commission to ignore the plain language of 170 IAC 8.5-3-7, which provides that the:

sewage disposal company shall install and maintain that portion of the service pipe from the lateral to the boundary line of the easement, public road, or street . . . customer shall install and maintain that portion of the service pipe from the end of the company's portion into the premises served . . . it shall be the customer's responsibility to maintain his service pipe *and appurtenances* in good operating condition." (emphasis added).

Petitioner's Terms and Conditions contain similar language, providing that the customer owns and maintains facilities on the "customer side of the boundary line of the easement." See, Pet. Exh. KKK-2; Rule 21. "[I]t shall be the responsibility of the owner to make all necessary repairs, extensions, relocations, changes or replacements thereof, *and of any accessories thereto.*" See, *Id.*; Rule 11.3.

The OUCC suggests the Commission find 170 IAC 8.5-3-7 is outdated, having been "first created in 1981" and "seemingly deals with service pipes in gravity systems . . . a grinder pump is not a service pipe." (OUCC's Proposed Order at 9.) Regardless of when the rule was first adopted, it would be contrary to law for the Commission to ignore the plain language of 170 IAC 8.5-3-7, which unambiguously requires customers to maintain the "service pipe *and appurtenances.*" Moreover, both 170 IAC 8.5-3-7 and Petitioner's Rule 11.3 are intended to balance the financial responsibility of homeowners and ratepayers. If those rules are in fact outdated, as the OUCC suggests, changes should be well thought out to avoid unintended consequences and ensure that the financial responsibilities of the homeowner and ratepayer remain in balance. As further discussed below, Petitioner's reliance on the Commission's

regulations and its Terms and Conditions has resulted in a policy with respect to maintenance of LPSS facilities on customer property that is reasonable and nondiscriminatory.

V. THE FINDINGS IN THE OUCC’S PROPOSED ORDER LACK A SHOWING OF ANY ACTUAL “INEQUITY” AND INSTEAD RELY ON HYPOTHETICALS.

The OUCC proposes the Commission find: “requiring CWA to maintain the grinder pumps it has installed mitigates the inequity of residents being forced to connect to a low pressure system while paying the same rates as residents who were not forced to connect low pressure systems.” OUCC’s Proposed Order at 8. There is no such inequity. Residents connected to a LPSS receive the same service from the same treatment plants, collection system and facilities as other CWA customers. Moreover, LPSS homeowners already have received the following up-front, longer term advantages as compared to virtually all other CWA customers:

- (i) LPSS homeowners paid nothing for the costs associated with their portion of the service pipe, the grinder pump, the connection to the electric panel on their property (Public’s Attachment JTP-2 at 15), or for abandoning their septic tank;
- (ii) as a result, LPSS homeowners have paid significantly less than any other class of customers for their connection to Petitioner’s wastewater system (*i.e.*, only \$2,766 as compared to \$6,766 paid by other STEP customers and approximately \$14,000 paid by residents under the Barrett Law) (Pet. Exh. 25);
- (iii) LPSS homeowners have the option to pay the lower cost (*i.e.* the \$2,766) over a 60-month period (\$46.10 per month), interest free, unlike any other class of customers (Public’s Attachment JTP-5 at 11); and
- (iv) LPSS homeowners received a full grinder pump system warranty for three years following the date of installation, unlike other customer classes that must begin maintaining their service pipes immediately (Public’s Attachment JTP-2 at 15).

No evidence was presented showing the responsibility for maintaining the “service pipe and appurtenances,” just like CWA’s other customers, has created inequities. Since 2016, not a single LPSS grinder pump has needed complete replacement. Tr. at 95.⁵ On cross-examination,

⁵ Q. How many customers have had to replace their grinder pump?

Mr. Jacob testified that he is an Indianapolis resident on a gravity system and because he has a bathroom and bathtub in his basement he has a grinder pump. Tr. at 39. Mr. Jacob also testified with respect to customers on gravity systems:

I've seen situations where even a few years later, people will plant trees near their laterals and the roots get into the laterals . . . and the homeowner needs to call contractor to clear out the roots in the system. . . . It could happen two years after someone moves in where they've put some things in the sewer system . . . and it causes a blockage. Tr. at 61.

In lieu of evidence of an actual inequity, the OUCC's Proposed Order improperly includes a number of hypothetical findings not supported by, and in some cases contradicted by, the record evidence. Representative findings are summarized below:

OUCC Proposed Finding	Actual Record Evidence
<p>"[W]e note the obvious sanitary advantage STEP customers connected gravity systems have – they may stay in their homes during power outages because they can use their bathroom facilities and water service without limitation." OUCC's Proposed Order at 8.</p>	<p>There is no evidence that STEP customers cannot "stay in their homes during power outages." To the contrary, Attachment JTP-5 to OUCC witness Parks' testimony contradicts this finding and indicates that during a power outage "the pump unit does have storage capacity. During power outages, the two largest producers of wastewater (dishwater and washing machine) are not in use; therefore, your water usage decreases. Because the length of the power outage cannot be planned, you should conserve water to the best of your ability." Attachment JTP-5 at 10.</p> <p>Mr. Jacob explained in rebuttal that: "[i]n the event of a power outage, the tank has storage capacity that allows for continued use of the homes' facilities. A receptacle is installed in the alarm panel to allow for generator connection to pump down the tank if needed during extended outages until repairs or replacements are complete." Pet. Exh. 14 at 19.</p> <p>During the evidentiary hearing, Mr. Jacob</p>

A. Zero.

OUCC Proposed Finding	Actual Record Evidence
	<p>again explained that customers can continue using the restroom and bathing during a power outage:</p> <p>Q. Okay, and if there's no power to the pump, ". . .the tank has storage capacity that allows for continued use of the homes' facilities."</p> <p>For how long?</p> <p>A. The storage is really a function of the use. If someone's taking baths and, you know, a lot of -- it's a big family taking a lot of baths, they'll quickly eat up that storage capacity in the tank, but the biggest volume comes from homes from things like washing machines, dishwashers, that because the power is out, those aren't functioning anyhow. . . Tr. at 38.</p>
<p>"Moreover, to implement operation of its STEP, as a not-for-profit CWA may be able to acquire grant money or low interest loans, which are likewise not available to its STEP customers." OUCC's Proposed Order at 9.</p>	<p>This is mere speculation. There is no evidence that CWA could "acquire grant money" to pay the cost of maintaining grinder pumps. Moreover, CWA provides LPSS customers with an interest free loan over a period of sixty-months to cover their Connections Fee and Permit Fee. The OUCC's proposed finding, appears to be an effort to suggest other ratepayers might not have to subsidize the OUCC's recommended approach, when in fact, they would.</p>
<p>"Presumably, CWA has installed grinder pumps with the same useful life in the same neighborhoods at about the same time. This would create clusters of pumps that may fail about the same time. If CWA does not take up the task of maintaining and replacing these grinder pumps, this neighborhood could someday be plagued by failed grinder pumps." OUCC's Proposed Order at 9.</p>	<p>Given that no grinder pumps have failed to date (Tr. at 95), there is no evidence to support this doomsday scenario, which not only presumes simultaneous failure of every grinder pump in an entire neighborhood, but that every homeowner in the neighborhood would be financially unable to repair or replace their pump. As discussed below, there is a means for a homeowner facing financial difficulties to repair or replace their pump.</p>

The law is clear that the “Commission is bound to base all of its findings upon substantial evidence of record.” *Re Indiana Gas Company, Inc.*, Cause No. 38080 (September 18, 1987). “Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *L.S. Ayres & Co. v. Indianapolis Power & Light Co.* 351 N.E.2d 814 (Ind. Ct. App. 1976) (quoting *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)). There is no evidence supporting the foregoing findings on the record, let alone “substantial evidence.” Accordingly, none of the findings are appropriate in the Commission’s final Order.

The OUCC’s Proposed Order also includes findings expressing concern about low-income customers:

How will these same homeowners be able to afford to replace a grinder pump at a cost of several thousand dollars? Will such customers vacate their homes or will they allow sewage to pool in their yards until they can afford to restore operation of their system. OUCC’s Proposed Order at 10.

CWA understands the financial difficulties low-income customers might experience if they must make an emergency repair to their grinder pump. Such circumstances are one of the reasons Petitioner included an infrastructure replacement fund as part of the Low-Income Customer Assistance Program (“LICAP”). The infrastructure replacement funds can be made available to eligible STEP customers in emergency circumstances. However, the financial needs of low-income customers connected to an LPSS do not justify subsidizing repairs and replacements of the property of all LPSS customers.

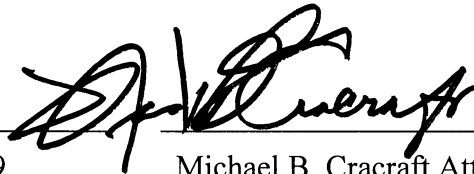
VI. CONCLUSION

CWA’s implementation of the STEP project practice it described in Cause No. 44685 regarding the construction of LPSS with grinder pumps is consistent with the Commission’s rules and Petitioner’s Terms and Conditions with respect to maintenance of facilities on

customer property and is reasonable and nondiscriminatory. This practice has been a win-win for STEP homeowners connecting to the CWA sewer system and other ratepayers alike, resulting in reduced costs for all of CWA's customers.

The OUCC has failed to provide sufficient evidence in support of its recommendation to have the Commission change CWA's STEP practice, mid-stream. The "Commission Discussion and Finding" section set forth in the OUCC's Proposed Order is not supported by substantial evidence in the record of this Cause and CWA respectfully submits the Commission should not adopt it. Accordingly, Petitioner requests that the Commission adopt the proposed findings CWA filed on May 24, 2019.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served this 31st day of

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