

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF AMERICAN SUBURBAN UTILITIES,)
INC. FOR (1) AUTHORITY TO INCREASE ITS)
RATES AND CHARGES FOR SEWER UTILITY)
SERVICE, (2) APPROVAL OF NEW SCHEDULES OF) CAUSE NO. 44676
RATES AND CHARGES APPLICABLE THERETO)

PETITION OF AMERICAN SUBURBAN)
UTILITIES, INC., AN INDIANA CORPORATION,)
FOR AUTHORITY TO ENTER INTO A TERM)
CREDIT FACILITY IN AGGREGATE AMOUNT UP)
\$5,100,000; (2) ENCUMBER PETITIONER'S) CAUSE NO. 44700
ASSETS AS SECURITY FOR SUCH LONG-TERM)
DEBT; AND (3) AUTHORITY TO USE THE NET)
PROCEEDS THEREFROM TO REIMBURSE ITS)
TREASURY AND FINANCE ITS CONSTRUCTION)
PROGRAM)

OUCC's Objection to ASU's Phase III Compliance Filing

On November 7, 2019, ASU filed its Petitioner's Submission of Compliance Filing and Phase III Rates, which ASU noted was made pursuant to the Commission's November 30, 2016 Order in this Cause . . . to reflect the placement in service of the Phase III improvement projects. The Final Order authorizes the OUCC and any intervenors 30 days after the submission of compliance filing to submit their objections. The order states what ASU must submit in its compliance filing, parts pertinent to Petitioner's compliance filing and this objection are set forth:

F. Phase-In of Rates. Petitioner is proposing to make adjustments to its revenue requirement in Phase II and Phase III through a compliance filing based on the actual cost of projects, additional actual accumulated depreciation, actual accumulated amortization of CIAC, revenues from actual customer count, and the actual capital structure.

Prior to implementing the authorized rates for each Phase, we find that Petitioner shall provide certification that the new plant is in service and verification that the construction costs have been incurred and paid. Petitioner shall also file a

report with the actual and approved amount of plant for the major projects by plant account. Any proposed adjustments to the costs associated with Petitioner's major projects will be limited to the project costs approved in this Cause. If a material difference exists between the actual cost of the major project and the cost pre-approved, Petitioner shall file evidence to support the reasonableness of the material difference. After each submission, the OUCC and Intervenors shall have 30 days to review the compliance filing and submit any objections. We expect the parties to work cooperatively to answer any questions that may arise.

(Order, pp. 39- 40, emphasis added by the OUCC.)

In Cause No. 44272, ASU sought preapproval under IC 8-1-2-23 of four projects including the CE-III project, which ultimately it was authorized to include in Phase III of this rate case pursuant to the requirements of the order. In the Commission's final order in Cause No. 44272, the Commission approved in its entirety the settlement agreement reached between ASU and the OUCC, which establishes the rights of the parties with respect to the preapproval of the CEIII project.

Pertinent parts are set forth:

3. In its supplemental testimony, the OUCC expressed concern about (1) the size of the proposed expansion to the Carriage Estates Wastewater Treatment Plant; and (2) construction of the proposed improvements by an affiliate of ASU and the ability to obtain assurance that the costs are reasonable. As a result, the parties have agreed to a stipulated preapproved amount that is derived from one of the alternatives (Option 2) presented in Mr. Serowka's supplemental rebuttal testimony and exhibits in this Cause. The stipulated amount of \$10,000,000 is materially lower than Petitioner's cost estimate for Option 2 and represents a compromise on the part of both parties. In entering into this stipulation, Petitioner is not agreeing that the CE-III Project can be completed for this amount, but rather the agreed preapproved amount provides sufficient assurance to allow Petitioner to proceed with a project.
4. Option 2 differs from Petitioner's proposal in its supplemental case-in-chief (referred to in Mr. Serowka's supplemental rebuttal testimony as "Option 4") in that the latter includes a capacity expansion to 4.0 MGD (instead of 3.0 MGD) as well as the installation of additional tanks that would permit the plant to be readily expanded to treat 6.0 MGD if in the future ASU installs additional equipment. To the extent Petitioner builds something with a capacity greater than Option 2 and seeks to include such incremental costs in rate base in a future rate case, it will be Petitioner's burden, as in all cases to the extent plant additions have not been preapproved, to demonstrate the

expenditures were reasonable and prudently incurred.

5. The Parties stipulate and agree that Petitioner's request for (i) approval of expenditures related to the CE-III Project, and (ii) inclusion of the new facilities resulting from this project in Petitioner's rate base in future rate cases, should be approved up to \$10,000,000, which amount is for construction only (inclusive of any allowance for funds used during construction ("AFUDC")). The Parties acknowledge and agree that Petitioner may choose to construct the plant improvements as proposed in its supplemental case-in-chief (referred to as "Option 4" in Mr. Serowka's supplemental rebuttal testimony). Whether Petitioner constructs Option 2 or Option 4, inclusion of associated expenditures in rate base for ratemaking purposes as preapproved in this Cause requires that the constructed plant be completed and in service. However, to the extent the plant is completed and in service, the OUCC agrees that no less than \$10,000,000 of expenditures actually incurred shall be considered to have produced plant that is used and useful. The parties agree that, while Petitioner may include in its rate base expenditures of no less than \$10,000,000 spent on completing Option 4, the OUCC does not otherwise waive any position with respect to the inclusion in rate base of Option 4 expenditures exceeding \$10,000,000 including but not limited to the reasonableness, prudence, necessity or scope of Option 4. Petitioner seeks no relief at this time to the extent actual expenditures of the CE-III Project exceed the agreed preapproval amount of \$10,000,000. Whether Petitioner constructs Option 2 or Option 4, to the extent actual expenditures exceed the agreed amount, inclusion of such excess expenditures in rate base in future rate cases shall be addressed in the same manner that utilities must address expenditures that have not been preapproved. In order to include the excess expenditures in rate base for ratemaking purposes, Petitioner will have the burden to demonstrate its expenditures were reasonable and were prudently incurred. Further, to the extent actual construction costs are greater than the preapproved amount, it will be Petitioner's burden to show that the amount charged by its affiliate is fair and reasonable and comparable to what an unaffiliated entity would have charged.
6. The amount agreed to in Paragraph 3 above does not include reasonable engineering costs or costs for removal of phosphorus in compliance with the IDEM requirements referred to in Paragraph 2. To the extent not already included in Option 2, construction cost expenditures for phosphorus removal and engineering in rate base in future rate cases will be addressed in the same manner as other rate base additions that have not been preapproved.

(Stipulation and Settlement Agreement (CE-III Project), Final order Cause No. 44272, Exhibit A, emphasis added by the OUCC.)

Based on its review of the information submitted by ASU through its compliance filing and through its response to informal discovery and through a site visit performed by OUCC analysts, and in consideration of the applicable order provisions including those recited above, the OUCC objects to the compliance filing submitted by ASU. The OUCC requests the record be opened to permit the introduction of evidence.

It does not appear ASU has constructed either Option 2 or Option 4, as described in its testimony in Cause No. 44272. (It also does not appear ASU has constructed a phosphorus system using the Micro Star Tertiary Filter, which ASU used to justify the \$1.5 million it was approved to include in rates in this Cause.) Moreover, the OUCC also considers that what ASU *has* constructed, while it may be in service, has not been completed, which is an agreed precondition to its being included in rate base for ratemaking purposes as established by the Stipulation and Settlement Agreement in Cause No. 44272. The existence of the settlement agreement and its order approving its terms were known and relied on by the Commission in its final order in this Cause. (See Final Order – Cause No. 44272, pp. 3- 4.)

The element of *completeness* is a material requirement because it implicates the rights of a party to the settlement agreement including the ability to evaluate what has been built, the total and actual cost of the project, whether any deviation should be considered prudent and reasonable, and whether any future expenditures should be considered part of the project or a new project to be put into rate base. (One consequence of the state of incompleteness is that ASU did not submit or provide any mark-ups or as-built plans by which the OUCC could compare what has been constructed with the design plans or the construction plans. Nor has ASU prepared a punch list to catalogue what still must be done.)

Importantly, according to a May 17, 2019 letter from IDEM found on IDEM's virtual file cabinet, Petitioner has requested and been granted by IDEM's Facility Construction Section an extension of time until June 30, 2020 to complete construction. It is not clear from ASU's filing whether additional costs needed to complete the project, which presumably have yet to be incurred, will result in the total cost of the CE-III Project being higher than the amount asserted in the compliance filing (in total the \$10 million preapproved by agreement of the OUCC and order of the Commission).

Moreover, there appears to be some issue as to whether ASU has built according to its IDEM construction permit and has a different design treatment capacity. An October 1, 2019 Inspection Summary/Noncompliance Letter from IDEM indicated "The Permit was rated as marginal due to the permittee deviating from the final constructed flow design of 4.0 MGD as noted in the permit. The permittee needs to request a modification of the permit to reflect final construction design." It is unclear whether this issue has been resolved, and whether or how that will affect the total CEIII project costs or whether all of the existing components will be in service or used and useful.

The OUCC objects to Petitioner's compliance filing because the CEII Project has not been completed as required by the approved Stipulation and Settlement Agreement in Cause No. 44272, making this compliance filing premature. Approving the compliance filing before ASU has completed its CE-III Project (Stages 2 and 3) would deprive the Public of rights it secured by agreement and that were approved by the Commission. Without waiving any defenses, the OUCC asks the commission to reject Petitioner's Compliance filing without prejudice until it has completed construction so that the total CE-III project costs may be known as contemplated by the terms of the Stipulation and Settlement Agreement (CE-III Project) approved by the Commission in Cause No. 44272.

In the Final Order in this Cause, the Commission indicated its review of the invoices called into question the adequacy of ASU's records. (Final Order, Cause Nos. 44676 and 44700, p. 41.) The Commission directed ASU to "require First Time or any other affiliated company to submit detailed invoices for all costs including unit costs for structures, materials, labor, equipment , and engineering, which should be compared to the cost estimate or contract entered into by Petitioner to complete the work." Id. The Commission said we expect to "receive this level of detail regardless of whether the work was done under a lump sum or time and materials contract." Id. The OUCC's objection is further based on the lack of detail in the First Time Billing invoices ASU submitted on November 7, 2019 in its compliance filing.

The OUCC asks that the Commission reopen the record to permit the filing of testimony by the OUCC that may be entered into evidence at a hearing. The OUCC further requests the Commission set an attorneys' conference to establish a procedural schedule.

WHEREFORE, the OUCC submits this objection and asks the Commission to reject the compliance filing without prejudice until the total project costs have been incurred. The OUCC further asks the Commission to establish a procedural schedule to reopen the record to receive evidence as necessary and provide such other relief as the Commission deems appropriate and just.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing **OUC's Objection to ASU's Phase III Compliance Filing** has been served upon the following counsel of record in the captioned proceeding by electronic service on December 9, 2019.

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