

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION)
OF THE CITY OF NEW CASTLE, INDIANA,)
FOR APPROVAL OF A NEW SCHEDULE OF)
RATES AND CHARGES FOR WATER)
UTILITY SERVICE AND THE ISSUANCE OF)
REVENUE BONDS TO PROVIDE FUNDS FOR)
THE COSTS OF THE ACQUISITION AND)
INSTALLATION OF IMPROVEMENTS AND)
EXTENSIONS TO THE WATERWORKS OF)
THE CITY)

CAUSE NO. 42984

APPROVED: SEP 13 2006

BY THE COMMISSION:

Gregory D. Server, Commissioner
Loraine L. Seyfried, Administrative Law Judge

On February 10, 2006, the City of New Castle, Indiana ("Petitioner" or "City"), petitioned the Indiana Utility Regulatory Commission ("Commission") for (i) approval of a new schedule of rates and charges to be applicable to the users of water utility service rendered by the municipal water utility owned and operated by the Petitioner and (ii) authority to issue up to \$1,000,000 of waterworks revenue bonds, pursuant to Ind. Code § 8-1.5-2. On April 21, 2006 and July 11, 2006, Petitioner prefiled testimony and exhibits constituting its case-in-chief. On June 21, 2006, the Commission conducted a public field hearing in the City of New Castle and received comments from members of the public who receive water service from Petitioner. On July 28, 2006, the Office of the Utility Consumer Counselor ("OUCC") prefiled its case-in-chief testimony.

Pursuant to notice given as provided by law, an evidentiary hearing was held in this matter, August 17, 2006, at 9:30 a.m., EDT, in Room E-306 of the Indiana Government Center South, 302 West Washington Street, Indianapolis, Indiana. At that hearing, Petitioner offered its April 21, 2006 prefiled testimony and exhibits, which were admitted into evidence without objection, as was the OUCC's prefiled testimony. At the hearing, the parties also presented a Joint Stipulation and Settlement Agreement, which included, as an attachment, a proposed final order reflecting the parties' agreed resolution of the issues in this matter. The Joint Stipulation and proposed order were entered into evidence, as a joint exhibit.

Having heard and considered the evidence and being duly advised in the premises, the Commission now finds that:

1. **Notice and Jurisdiction.** Notice of the time and place of the hearing conducted by the Commission in this matter was given as required by law. Petitioner is a municipally owned utility rendering water utility service to the public in and around the City of New Castle, Indiana, subject to Commission jurisdiction as prescribed in the Public Service Commission Act,

as amended, Ind. Code § 8-1-2 and Ind. Code §§ 8-1.5-2-18 and 19. The Commission has jurisdiction over Petitioner and the subject matter of this cause.

2. **Petitioner's Characteristics.** Petitioner serves approximately 17,780 customers in the City of New Castle and surrounding area. Petitioner's customer base is composed of residential, commercial, industrial and other customers. The Petitioner's current rates and charges for water utility service were approved by the Commission on December 20, 1990, in Cause No. 39033.

3. **Test Year.** The test year for determining Petitioner's current revenues and expenses incurred in providing service to the public is the 12-month period ended December 31, 2005, adjusted for changes that are representative of future operations and sufficiently fixed, known and measurable for ratemaking purposes. The Commission finds the test year agreed upon by the parties is sufficiently representative of Petitioner's normal operations to provide reliable data for ratemaking purposes.

4. **Testimony Presented at Field Hearing.** At the public hearing held on June 21, 2006, a few members of the public provided testimony and several others submitted written comments shortly after the public hearing. Many objected to the requested increase in water rates, citing to recent job losses in the area, recent increases in other utility rates and concern for retirees in the area living on fixed incomes. A few other commenters questioned the need for some of the projects recently completed by the utility and expressed concerns with the utility's maintenance and plans for upgrades of existing water lines. One commenter also noted that the utility had not raised connection fees for many years. A few commenters also expressed concern with the method and manner in which public notice is provided by the City of meetings concerning utility matters.

5. **Petitioner's Requested Relief.** Petitioner originally sought authority to issue revenue bonds up to a maximum principal amount of \$1 million to finance the costs of the construction and installation of (i) the "Blue River Valley Area Project," consisting of the installation of water main extensions to a recently annexed area in the southwestern part of the City; (ii) the "State Road 103 Project," consisting of the replacement of approximately 16,000 feet of water mains ranging from 4" to 16" diameters, including service lines, hydrants, valves and related appurtenances in connection with road improvements being made to State Road 103; and (iii) the "County Road 300S/Industrial Park Project," consisting of the relocation of existing water lines in conjunction with improvements being made to County Road 300S (collectively, the "Projects"). In response to rising costs of supplies and an opportunity to undertake a portion of the Projects using City employees, a portion of the Projects have now been completed at a cost savings. Petitioner now needs to issue revenue bonds in the maximum principal amount of only \$855,000 to finance the Projects, a portion of which will be applied to reimburse the Petitioner for costs already incurred in completing a portion of the Projects.

Based upon the evidence presented, the Commission finds that the Petitioner's proposed Projects are necessary, reasonable and in the public interest and the issuance of revenue bonds in

the maximum principal amount of \$855,000 is a necessary and reasonable means for financing the Projects.¹ Therefore, to finance the costs of the Projects, including the reimbursement of costs incurred by the Petitioner in completing the portion of the Projects already undertaken, and to pay the costs of issuance of the bonds, the Petitioner should be authorized to issue the revenue bonds in a principal amount not to exceed \$855,000.

With respect to rates, Petitioner, in its prefiled testimony, submitted evidence that concluded a revenue increase of 34.12% was justified. In its testimony, however, Petitioner stated that an across-the-board increase of 30% would be acceptable and, with certain adjustments, would allow the utility to meet its revenue requirements. The OUCC's testimony agreed that an increase of at least 30% was justified.

In response to an August 15, 2006 docket entry, Petitioner also indicated that it had recently contracted with M.E. Simpson to identify and locate leaks in areas of the water distribution system and that discovered leaks have been corrected. It was also noted that Petitioner would continue with additional evaluations, studies and corrections to reduce water system losses and potential recording errors.

Ind. Code § 8-1.5-3-8(c) requires that a municipal utility's rates be sufficient to pay the following costs of service:

- a. all the legal and other necessary expenses incident to the operation of the utility including:
 - (1) maintenance costs;
 - (2) operating charges;
 - (3) upkeep;
 - (4) repairs;
 - (5) depreciation; and
 - (6) interest charges on bonds or other obligations, including leases;
- b. a sinking fund for liquidation of bonds or other obligations, including leases;
- c. a debt service reserve for bonds or other obligations, including leases, in an amount established by the municipality, not to exceed the maximum annual debt service on the bonds or obligations or the maximum annual lease rentals;
- d. working capital;
- e. extensions and replacements, to the extent not provided for through depreciation; and
- f. any taxes that may be assessed against the utility.

¹ While we are approving Petitioner's proposed financing in this particular instance, we would note that we share the OUCC's concern with Petitioner's depletion of its cash to pay for and complete projects that Petitioner needed to have financed with revenue bonds requiring the approval of this Commission. If the Commission had determined not to approve the issuance of the revenue bonds, the Petitioner may have found itself in an unsatisfactory position. Therefore, we would encourage Petitioner to seek and obtain authority for the issuance of revenue bonds prior to commencing and completing construction of projects requiring bond financing or, if necessary, to issue bond anticipation notes.

While Ind. Code § 8-1.5-3-8(e) allows a municipally-owned utility to request rates and charges sufficient to include a reasonable return on its utility plant, Petitioner did not request such a return in this proceeding.

As set forth in the OUCC's testimony, and based upon the evidence presented, the Commission finds that Petitioner's net annual revenue requirements are as follows:

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|------------------------------------|---------------------|
| Operation and Maintenance Expenses | \$ 1,714,440 |
| Taxes other than Income Taxes | 77,588 |
| Depreciation Expense | 278,578 |
| Payment in Lieu of Property Taxes | 95,052 |
| Debt Service - Current Debt | 403,530 |
| Debt Service - Proposed Debt | <u>33,080</u> |
| Total Revenue Requirements | \$ 2,602,268 |
| Less: Interest Income | <u>5,574</u> |
| Net Revenue Requirements | <u>\$ 2,596,694</u> |

The Commission further finds that (a) Petitioner's existing rates and charges do not produce revenue sufficient to pay all the legal and other necessary expenses associated with the operation of the Petitioner's utility under Ind. Code § 8-1.5-3-8; (b) a proposed increase in operating revenues of 30% is needed to produce an income sufficient to maintain the utility property in a sound physical and financial condition and to render adequate and efficient service; and (c) the increase should be 30% across-the-board to all customers.

6. **OUCC Recommendations and Settlement.** In its prefiled testimony, the OUCC recommended ("OUCC Recommendations") that:

(a) Petitioner should be required to provide a true-up report on actual interest rates obtained within 30 days after completing any construction financing, with any material variances in interest rates from those forecast to be reflected in updated rates and charges;

(b) Petitioner should be required to register with the Department of Revenue and begin paying the Indiana utility receipts tax;

(c) Petitioner should be required to apply to the Commission to increase non-recurring charges, including connection fees, within 60 days of receiving an order in this cause to match more closely actual costs incurred by Petitioner's utility;

(d) Petitioner should be required to add the rates and fees it charges for bulk water sales to its tariff; and

(e) For the purpose of examining Petitioner's rates in 2008, Petitioner should be required, upon request by the OUCC, to provide the OUCC access to its water utility records.

In the Joint Stipulation and Settlement Agreement, the Petitioner agreed to these OUCC Recommendations. In addition, as a part of their settlement, the parties agreed that Petitioner is not required to make any other filing recommended by the OUCC in its prefiled testimony with the Commission or the OUCC in 2008.

Settlements presented to the Commission are not ordinary contracts between private parties. *United States Gypsum, Inc. v. Indiana Gas Co.*, 735 N.E.2d 790, 803 (Ind. 2000). When the Commission approves a settlement, that settlement “loses its status as a strictly private contract and takes on a public interest gloss.” *Id.* (quoting *Citizens Action Coalition v. PSI Energy*, 664 N.E.2d 401, 406 (Ind. App. 1996)). Thus, the Commission “may not accept a settlement merely because the private parties are satisfied; rather [the Commission] must consider whether the public interest will be served by accepting the settlement.” *Citizens Action Coalition*, 664 N.E.2d at 406.

Furthermore, any Commission decision, ruling, or order – including the approval of a settlement – must be supported by specific findings of fact and sufficient evidence. *United States Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coalition v. Public Service Co.*, 582 N.E.2d 330, 331 (Ind. 1991)). The Commission’s own procedural rules require that settlements be supported by probative evidence. 170 IAC 1-1.1-17(d). Therefore, before the Commission can approve the Settlement Agreement, we must determine whether the evidence in this cause sufficiently supports the conclusions that the Settlement Agreement is reasonable, just, and consistent with the purpose of Ind. Code § 8-1-2 et seq., and that such agreement serves the public interest.

The Commission finds that the OUCC Recommendations and the terms of the settlement described above are fair, reasonable and in the public interest, and that such settlement represents a desirable and fair resolution of the matters at issue in this proceeding.

7. **Non-Precedential Status.** The parties stipulated that the settlement of this cause and any resulting order should not be construed or cited as precedent by any person in any other proceeding, whether before the Commission, any State Court, or other Court of competent jurisdiction, except as is necessary to enforce the terms of their agreement as approved in this order. Consequently, we find that our approval herein should be construed in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434 (Ind. Util. Reg. Comm’n, March 19, 1997).

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

1. The parties' Stipulation and Settlement Agreement shall be and hereby is approved in its entirety, without change, and the terms and conditions thereof, as set forth in that agreement, shall be and hereby are incorporated herein as a part of this Order.

2. The Petitioner is authorized to issue its waterworks revenue bonds in the principal amount not to exceed \$855,000, to finance the Projects and to reimburse itself for the portion of the Projects already undertaken.

3. The Petitioner is authorized to increase its operating revenues by a 30% increase in its user rates, across-the-board.

4. The OUCC Recommendations set forth above are hereby approved.

5. Petitioner shall file with the Gas/Water/Sewer Division of this Commission, prior to placing into effect the rates and charges approved herein, a new tariff in accordance with this order. That tariff, when approved by the Gas/Water/Sewer Division, shall cancel all previously approved tariffs of the Petitioner.

6. Petitioner shall pay the following itemized charges within twenty (20) days from the date of this Order into the Treasury of the State of Indiana, through the Secretary of the Commission:

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| Commission Charges | \$200.00 |
| Court Reporting | \$ 57.68 |
| Legal Advertising | \$130.69 |
| OUCC Charges | \$380.00 |
| TOTAL | \$768.37 |

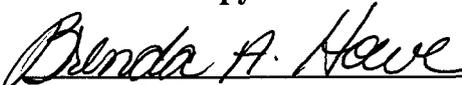
7. In accordance with Ind. Code § 8-1-2-85, Petitioner shall pay a fee of twenty-five cents (\$0.25) for each one hundred dollars (\$100) of waterworks revenue bonds issued, into the Treasury of the State of Indiana through the Secretary of this Commission, within thirty (30) days of the receipt of the financing proceeds authorized herein.

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

HARDY, LANDIS, SERVER AND ZIEGNER CONCUR; HADLEY ABSENT:

APPROVED: SEP 13 2006

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



Brenda A. Howe
Acting Secretary to the Commission