

ORIGINAL

Commissioner	Yes	No	Not Participating
Huston	✓		
Freeman	✓		
Krevda	✓		
Ober	✓		
Ziegner	✓		

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

JOINT PETITION OF AQUA INDIANA, INC., SANI TECH, INC., AND SOUTHEASTERN UTILITIES, INC. FOR APPROVAL OF AND CONSENT TO THE TRANSFER TO AQUA INDIANA, INC. OF THE PLANT, PROPERTY AND OTHER ASSETS OF SANI TECH, INC. AND SOUTHEASTERN UTILITIES, INC., AND FOR OTHER RELATED RELIEF.

CAUSE NO. 45385

APPROVED: SEP 23 2020

ORDER OF THE COMMISSION

Presiding Officers:

Stefanie N. Krevda, Commissioner

Lora L. Manion, Administrative Law Judge

On May 27, 2020, Aqua Indiana, Inc. (“Aqua Indiana”), Sani Tech, Inc. (“Sani Tech”), and Southeastern Utilities, Inc. (“Southeastern”) (collectively, the “Joint Petitioners”) filed their Verified Joint Petition with the Indiana Utility Regulatory Commission (“Commission”). Joint Petitioners request: (1) consent and approval to the transfer by merger of the wastewater utility plant, property, and other assets of Sani Tech and Southeastern to Aqua Indiana; (2) certain relief related to such transfers discussed herein; and (3) approval of post-transfer schedules of rates and charges. Also on May 27, 2020, Aqua Indiana filed its case-in-chief in support of the Verified Joint Petition.

On July 10, 2020, the Indiana Office of Utility Consumer Counselor (“OUCC”) filed its direct testimony. On July 31, 2020, Aqua Indiana submitted notice of its intent not to file rebuttal testimony.

The Commission set this matter for an Evidentiary Hearing to be held at 9:30 a.m. on August 17, 2020, in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. On August 11, 2020, a Docket Entry was issued advising that in accordance with Indiana Governor Holcomb’s Executive Order 20-09, the hearing would be conducted via teleconference and providing related participation information. Joint Petitioners and the OUCC, by counsel, participated in the hearing via teleconference, and the testimony and exhibits of Joint Petitioners and the OUCC were admitted into the record without objection.

Based upon the applicable law and the evidence presented, the Commission finds:

1. Notice and Jurisdiction. Due, legal, and timely notice of the public evidentiary hearing conducted in this Cause was given and published by the Commission as required by law. Each Joint Petitioner is a “public utility” as that term is defined in Ind. Code § 8-1-2-1(a). The Commission has jurisdiction over mergers and transfers of utilities pursuant to Ind. Code § 8-1-2-

83. Therefore, the Commission has jurisdiction over Joint Petitioners and the subject matter of this Cause.

2. Relief Requested. Joint Petitioners Sani Tech and Southeastern (collectively, the “Merging Utilities”) and Joint Petitioner Aqua Indiana are seeking Commission approval for and consent to the transfer by merger of the plant, property, and other assets, inclusive of indeterminate permits and operating rights, of each of the Merging Utilities to Aqua Indiana. In connection with the proposed transfers, Aqua Indiana requests certain relief related to such transfers: (1) to reflect on its books and records the assets, liabilities, and capital account balances of the Merging Utilities as they appear on the books and records of those corporations as of the date the plant, property, and other assets are transferred to Aqua Indiana; (2) to cancel the Merging Utilities’ respective existing rates and charges for service, and for Aqua Indiana to apply those same respective rates and charges to customers currently served by the Merging Utilities; and (3) to cancel the Merging Utilities’ existing rules and regulations for service, and to apply the rules and regulations currently applied by Aqua Indiana to its wastewater customers in Indiana.

3. Joint Petitioner Characteristics. Sani Tech is an Indiana for-profit corporation providing wastewater utility service to approximately 120 customers in Morgan County, Indiana. Southeastern is an Indiana for-profit corporation providing wastewater utility service to approximately 96 customers in Marion County, Indiana. Aqua Indiana is an Indiana for-profit corporation providing wastewater utility service to approximately 27,794 customers and water utility service to approximately 1,284 customers in Indiana. Aqua Indiana also provides comprehensive administrative and operational support services for water and wastewater utilities in Indiana, including Sani Tech and Southeastern. Aqua America, Inc. was renamed Essential Utilities, Inc. (“Essential”) in February 2020, and each Joint Petitioner is a direct or indirect subsidiary of Essential.

4. Joint Petitioner Case-in-Chief. Joint Petitioners’ witness Kari Bennett, President of each Joint Petitioner, sponsored the Plan and Agreement of Merger (the “Plan”) pursuant to which the Merging Utilities would merge into Aqua Indiana. As Ms. Bennett explained, the Plan provides for the transfer and assignment of the Merging Utilities’ plant, property, and other assets to Aqua Indiana. Ms. Bennett testified that both Sani Tech and Southeastern provide wastewater utility service pursuant to authorized certificates of territorial authority (“CTA”) issued by the Commission. Specifically, Sani Tech’s wastewater utility service is authorized by CTA No. 145, issued by the October 13, 1993 Order in Cause No. 39695. Southeastern’s wastewater utility service is authorized by the January 15, 1997 Order in Cause No. 40619. Ms. Bennett said that each of these CTAs would be transferred to Aqua Indiana should the Commission grant the relief requested in this proceeding. Ms. Bennett sponsored the corporate resolutions authorizing and approving the Plan.

Ms. Bennett testified that the proposed transfers would result in very few, if any, changes in the operation of the Merging Utilities. As indirect subsidiaries of Essential, Ms. Bennett explained that Aqua Indiana already provides much of the operational, administrative, and financial support for Sani Tech and Southeastern, and that will not change because of the mergers. Ms. Bennett testified that Essential’s financial and other support for utility operations will also remained unchanged. Ms. Bennett also testified that the Commission has recognized in other

proceedings that Aqua Indiana has the managerial, technical, and financial ability to provide adequate and reliable service to customers.

Ms. Bennett testified that Aqua Indiana intends to reflect on its books and records the assets, liabilities, and capital account balances of the Merging Utilities as they appear on the books and records of those corporations as of the date the plant, property, and other assets are transferred to Aqua Indiana. Aqua Indiana also proposes to adopt the Merging Utilities' existing depreciation accrual rates for application to the transferred properties of the Merging Utilities. Further, Ms. Bennett stated that, until otherwise provided, Aqua Indiana intends to apply to customers the same recurring and non-recurring rates and charges as the Merging Utilities apply currently to their respective customers. Ms. Bennett sponsored copies of the schedules of rates and charges that Aqua Indiana proposes to submit to the Commission's Water/Wastewater Division upon a Final Order approving the relief sought in this proceeding.

Ms. Bennett testified that following the proposed mergers, Aqua Indiana intends to apply to customers of the Merging Utilities the Rules, Regulations, and Conditions of Sewer Service that Aqua Indiana currently applies to its other wastewater utility customers. Ms. Bennett said the Commission approved these rules in its April 29, 2015 Order in Cause No. 44533, and the application will promote consistent, non-discriminatory, and non-preferential treatment of Aqua Indiana's customers. Aqua Indiana committed to providing notice to customers of the Rules, Regulations, and Conditions following Commission approval of the mergers. Ms. Bennett testified that Aqua Indiana would: (1) notify the Commission and OUCC within 14 days following implementation of the mergers; and (2) notify the customers of Sani Tech and Southeastern in a monthly bill insert of the mergers.

Ms. Bennett recommended that the Commission approve the relief requested in this Cause. She testified that the transfer of the Merging Utilities' plant and property to Aqua Indiana and provision of service to each of their current customers does not represent a meaningful change from the current state of affairs, but reflects an opportunity to provide service to customers in a more cost effective and efficient manner. Further, Ms. Bennett stated that having the operations of the Merging Utilities in the same legal structure would permit more effective and efficient operations of their respective plant, property, and other assets. In Ms. Bennett's view, there also should be some cost savings that result from the combination, although difficult to quantify.

5. OUCC Evidence. Richard J. Corey, Utility Analyst for the Water/Wastewater Division, described the proposed transfers involving Joint Petitioners and other relief requested in this Cause, including without limitation the manner in which Aqua Indiana proposed to account for the proposed transfers. Mr. Corey testified that all of the Merging Utilities are direct or indirect subsidiaries of Essential. Mr. Corey indicated that the OUCC has no objection to the mergers as proposed, noting that the OUCC would like Joint Petitioners to notify the Commission and the OUCC when these mergers are accomplished. Mr. Corey also stated the OUCC does not object to the adoption of Aqua Indiana's rules and regulations to the customers of Sani Tech and Southeastern following the mergers.

Mr. Corey testified that Aqua Indiana provided proposed tariff sheets for the new Sani Tech and Southeastern divisions after the mergers. He confirmed that the rates and charges

applicable to customers would not change because of the mergers. He stated the OUCC has no objections to the proposed tariff sheets.

Mr. Corey concluded that Aqua Indiana possesses the legal, financial, and operational ability to render the proposed wastewater utility services now provided by Sani Tech and Southeastern. He testified regarding his belief that the proposed transfers are in the public interest and recommended Commission approval.

6. Discussion and Findings. Pursuant to Ind. Code § 8-1-2-83(a), the Commission has jurisdiction over the mergers and transfers of public utilities as follows:

No public utility, as defined in section 1 of this chapter, shall sell, assign, transfer, lease, or encumber its franchise, works, or system to any other person, partnership, limited liability company, or corporation, or contract for the operation of any part of its works or system by any other person, partnership, limited liability company, or corporation, without the approval of the commission after hearing. ...

Ind. Code § 8-1-2-83(a), in relevant part.

Upon our consideration of the evidence, we note that the proposed transfer of the Merging Utilities to Aqua Indiana will have minimal impact on the current operations of Joint Petitioners. Aqua Indiana is already responsible for the operations of each of the Merging Utilities and will have the same resources to provide those operations. Aqua Indiana also has been shown to have the managerial, technical, and financial ability to provide service to the current customers of the Merging Utilities.

The evidence also supports concluding that having all of the operations of the Merging Utilities in the same legal structure will permit more effective and efficient operation of their respective plant, property, and other assets. For example, consolidation of the separate operations into a single entity will reduce the number of corporate and regulatory proceedings, related record keeping and documentation, and result in other administrative efficiencies and advantages. The consolidation of the Merging Utilities would not increase costs and should create an opportunity for cost savings that could benefit customers. Accordingly, based on the evidence of record, we find that the proposed transfers are in the public interest and are approved.

Aqua Indiana's proposal to account for the property, plant, and assets received from the Merging Utilities in the same way as those utilities did, including without limitation the use of their depreciation rates, is sound and should be implemented.

We also agree that Aqua Indiana should apply the same Commission approved Rules, Regulations, and Conditions of Sewer Service that Aqua Indiana currently applies to its other wastewater utility customers. Uniform rules and regulations promote consistent, nondiscriminatory, and non-preferential treatment. Applications of these uniform rules and regulations will aid Aqua Indiana's efforts to provide service in an economical and efficient manner.

Similarly, Aqua Indiana's continuing use of the Merging Utilities' current rates and charges, as shown on its proposed schedules of rates and charges, will be the least disruptive for customers and are approved. However, we note that the respective Merged Utilities have disparate non-recurring fee amounts and naming conventions, which may be confusing and appear inconsistent to customers. Therefore, we encourage Aqua Indiana to develop uniform non-recurring fee amounts and naming conventions as much as possible and as appropriate, utilize the Commission's 30-day filing process to obtain the applicable approval.

As recommended, Aqua Indiana shall: (1) notify the Commission and the OUCC of the mergers within 14 days following implementation of the proposed mergers; and (2) notify the customers of Sani Tech and Southeastern promptly, via a monthly bill insert, of: (a) the mergers and (b) the newly applicable Rules, Regulations, and Conditions of Service approved in Cause No. 44533. Additionally Aqua Indiana shall provide a copy of the customer notification to the Commission Consumer Affairs Division so that they will be prepared to answer customer inquiries, if any, regarding the mergers.

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

1. The proposed transfers to Aqua Indiana by merger of all of the Merging Utilities respective plant, property, and other assets, and all actions necessary to effectuate or related to such mergers and transfers, are approved.

2. The proposed transfers to Aqua Indiana of the operating rights of each of the Merging Utilities, including without limitation any certificates of territorial authority and licenses, permits, and franchises for the use of county roads and rights-of-way held by each, are approved.

3. The recording on the books and records of Aqua Indiana upon completion of the transfers of the Merging Utilities' plant, property, and other assets of the aggregate of the assets, liabilities, and capital accounts of the Merging Utilities, subject to such adjustments as are necessary to reflect the transfers, is hereby approved.

4. The cancellation of the Merging Utilities' existing rates and charges for service, and the application by Aqua Indiana of those same rates and charges to customers currently served by the Merging Utilities, subject to subsequent amendment, addition, deletion, and changes as the Commission may allow, is approved.

5. The cancellation of Southeastern's rules and regulations for service, and the application of the rules and regulations proposed by Aqua Indiana for each of the Merging Utilities, subject to subsequent amendment, addition, deletion, and changes as the Commission may allow, are approved.

6. Aqua Indiana shall file with the Water/Wastewater Division of the Commission new schedules of rates and charges, consistent with Finding Section No. 6, which schedules of rates and charges shall be effective on and after the date of approval.

7. Aqua Indiana shall comply fully with the notice requirements as set forth in Finding Section No. 6.

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

HUSTON, FREEMAN, KREVDA, OBER, AND ZIEGNER CONCUR:

APPROVED: SEP 23 2020

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

Mary M. Schneider
Secretary of the Commission