

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF KINGSBURY) CAUSE NO. 44590 U
UTILITY CORPORATION FOR A NEW SCHEDULE OF)
RATES AND CHARGES FOR WASTEWATER SERVICE) APPROVED: JUL 05 2018

PHASE 2 ORDER OF THE COMMISSION

Presiding Officers:
James F. Huston, Chairman
Loraine L. Seyfried, Chief Administrative Law Judge

On February 9, 2015, Kingsbury Utility Corporation ("KUC") filed a Small Utility Rate Application. The Commission issued a Phase 1 Order on March 2, 2016 ("Phase 1 Order"), authorizing KUC to increase its rates and charges for wastewater service in two phases. KUC implemented its authorized Phase 1 rates on April 14, 2016.

On September 1, 2017, KUC filed its Capital Project Completion Report, Report on Loan Closing and Terms, Phase 2 Rates Schedules, and an affidavit of its professional engineer, Zachary Baker. KUC filed Revised Phase 2 Rate Schedules on September 21, 2017.

On October 13, 2017, the Indiana Office of Utility Consumer Counselor ("OUCC") filed its Notice of Objection to KUC's filings. On October 23, 2017, KUC filed another affidavit of Mr. Baker. In accordance with an October 25, 2017 Docket Entry, the parties met with Commission staff on November 6, 2017, to discuss the OUCC's objections to KUC's filings.

On December 5, 2017, KUC filed its Report and Request for Interim Phase 2 Rates requesting authority to implement interim Phase 2 rates based on matters not disputed by the OUCC while the parties continued to discuss the disputed issues. On January 17, 2018, the Commission issued an Interim Order approving Phase 2 rates on an interim basis and requiring KUC to either file a settlement agreement on the remaining issues or provide the documentation necessary to support its final proposed Phase 2 rates.

On March 23, 2018, KUC filed its supplemental evidence in support of its requested Phase 2 rates. The OUCC filed its response on April 12, 2018.

On May 31, 2018, staff from the Commission and the OUCC met with KUC representatives, Mr. Jerry Jackson and Mr. Zack Baker, at the utility to discuss the issues related to installation of the influent flow meter.

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

- 1. Notice and Jurisdiction. KUC is a public utility as that term is defined in Ind. Code § 8-1-2-1(a) and qualifies for treatment as a small utility under Ind. Code § 8-1-2-61.5. Under

Ind. Code § 8-1-2-61.5, the Commission may enter an order affecting a utility's rates and charges for service without a formal public hearing. Accordingly, the Commission has jurisdiction over KUC and the subject matter of this proceeding.

2. KUC's Characteristics. KUC is a for-profit, combined water and wastewater utility that serves approximately 77 residential, commercial, and small-industrial wastewater customers in LaPorte County. KUC's water and wastewater infrastructure is over 60 years old and was originally installed to serve a United States Army munitions plant covering an area of approximately 3,000 acres.

3. Background and Relief Requested. The Phase 1 Order authorized KUC to increase its rates in Phase 2 by 27.96% across the board to produce additional operating revenues of \$54,789. However, the Phase 2 rate increase was made subject to true-up following KUC's compliance filing. Phase 1 Order at 11.

Prior to implementing the Phase 2 rate increase, KUC was required to complete certain approved capital projects and place the new utility plant in service. Upon completion of the projects, KUC was to identify the capital improvements made and provide specific detailed invoices to support the project costs. KUC was also required to file revised schedules reflecting actual project costs, the actual amount and cost of long-term debt, the updated Phase 2 cost of capital, and any other changes to the amount reflected in KUC's original and revised schedules. Phase 1 Order at 13.

KUC seeks to increase its rates under Phase 2 by 42.11% across the board to produce additional operating revenues of \$82,509.

4. Commission Discussion and Findings. As required by the Phase 1 Order, KUC submitted information identifying the capital projects it has completed and indicating that the new utility plant is in service. KUC also filed revised schedules purporting to reflect the actual project costs, the actual amount and cost of long-term debt, and the updated Phase 2 cost of capital.

The OUCC asserts that KUC's Phase 2 rate increase is limited to the capital projects and amounts, including a 15% contingency per project, authorized by the Commission in its Phase 1 and October 5, 2016 Orders under this Cause. Consequently, the OUCC takes issue with certain project costs and the inclusion of additional projects that were not authorized, namely additional items included under the category of primary and secondary sewage pumps and influent grinders. The OUCC also takes issue with KUC's failure to install an influent flow meter as required by the Commission's Phase 1 Order.

KUC provided supplemental information concerning its capital projects and argues that because the Commission's Phase 1 Order required KUC to file revised schedules reflecting actual project costs, the Commission should approve actual costs that are reasonable, even if they exceed the authorized amounts. With respect to the influent flow meter, KUC argues that it should not be required to install such meter because it would cost at least \$40,000 (which is higher than the authorized amount of \$15,000) and would not provide accurate readings because of the low flow levels.

A. **Capital Projects.** KUC requests authority to recover \$3,590 related to the installation of two influent grinders, which were not included in KUC's capital project list on which Phase 2 rates were based. KUC also requests authority to recover \$162,742 for two 850 gallon per minute secondary sewage pumps, an amount that exceeds the \$110,400 authorized by the Commission's Phase 1 Order.

Based on the evidence presented, we deny KUC's request to recover \$3,590 related to the influent grinders. The Commission's Phase 1 Order authorized a Phase 2 rate increase based on the completion of specifically identified and approved projects—none of which included the installation of influent grinders. As noted by the OUCC, rates are traditionally authorized based on capital costs that a utility has already incurred for projects that are used and useful. However, in this case, KUC also requested advance authority for certain project costs it expected, but had yet, to incur. Because KUC did not include the influent grinders in its capital projects list for which it sought and received approval, neither the Commission nor the OUCC has had the opportunity to review or consider the reasonableness or necessity of the project or its associated costs. While we decline to approve KUC's request to recover the costs associated with this project as part of its Phase 2 rates, KUC is not precluded from presenting these costs for recovery in its next rate case.

With respect to the secondary sewage pumps, we also deny KUC's request to recover the amounts it incurred over the \$110,400 amount approved in the Phase 1 Order. Based on the evidence presented, it appears that the excess costs are related to KUC's inclusion of other construction work for replacing valves, piping, fitting, and the addition of system electrical and computer control components. Once again, none of these items were included in KUC's description of the secondary sewage pump project or the project estimate that was provided and approved in the Commission's Phase 1 Order. The Phase 2 project estimates presented by KUC was a highly contested issue in its rate case and all but the Travis Ditch project were resolved by the Phase 1 Order. Unlike the Travis Ditch project where the Commission allowed KUC the opportunity to submit additional estimate information to update the \$18,400 included in the calculation of Phase 2 rates, no similar authorization was provided for the secondary sewage pumps.

B. **Influent Flow Meter.** In the Commission's Phase 1 Order, we found that installation of an influent flow meter would provide information concerning the volume and pollutant load generated by KUC's collection system customers compared to the volume and pollutant load of hauled wastes from KUC's affiliated customers and authorized "KUC to install the meter as soon as practical." Phase 1 Order at 5. Such information would assist KUC in performing cost of service and influent loading studies as well as evaluating future facility expansions.¹ *Id.* Based on information from the OUCC, the Commission included an estimated \$15,000 plus a 15% contingency in KUC's borrowing authority for installation of the meter. *Id.*

KUC argues that it should not be required to install such meter because after further investigation, it has determined it would cost at least \$40,000 (which is higher than the authorized amount of \$15,000) and would not provide accurate readings because of the low flow levels. KUC

¹ Because a utility's rates and charges should reflect the cost to serve its various classes of customers, a cost of service study that relies upon accurate usage data helps to ensure that costs are reasonably allocated to produce just and reasonable rates for each type of customer and avoid subsidization between customers.

questioned the Commission's authority to require the meter's installation and pointed to correspondence with the Indiana Department of Environmental Management ("IDEM") closing out an environmental enforcement case, which had involved the discussion of installing an influent flow meter.

The OUCC argues that the Commission's Phase 1 Order requires KUC to install the influent flow meter and KUC did not appeal that decision. In addition, the OUCC argues that KUC's evidence (*i.e.*, a list of costs without further analysis or explanation) is insufficient to justify removing the requirement to install the influent flow meter.

Based on the evidence presented, we decline to approve KUC's request that it not be required to install the influent flow meter. As noted by the OUCC, the Phase 1 Order requires installation of the influent flow meter "as soon as practical." KUC did not appeal the Phase 1 Order. Although KUC now argues that installation of the influent flow meter is not practical and would cost significantly more than the estimated amount, we find that KUC has failed to provide sufficient evidence to convince us that our decision in the Phase 1 Order should be altered. Although KUC provided an affidavit from its engineer indicating KUC had determined it would cost \$40,000 and be impractical to install the meter, the only documentation provided to support those assertions was a list of costs. Further, based upon the discussion of the parties on May 31, 2018 at the KUC wastewater utility, it appears that installation of the influent flow meter at an alternative location (*i.e.*, placement under an access drive as depicted on Attachment A) to that originally contemplated may be practical and achievable at a cost closer to the estimated amount.

In addition, while KUC provided a copy of a letter to IDEM expressing its concerns with installation of an influent flow meter and a copy of a letter from IDEM closing its enforcement action, we lack any evidence indicating that IDEM ultimately agreed with KUC's assertions. We also question the relevance of any determination by IDEM (a state agency responsible for enforcing wastewater effluent limitations) concerning installation of an influent flow meter in this Cause, which involves a determination by the Commission (the state agency responsible for ensuring establishment of just and reasonable rates that are not discriminatory).

C. Conclusion. The Phase 1 Order requires KUC to complete certain approved capital projects and place the new utility plant in service prior to implementing Phase 2 rates. Because KUC has not completed installation of the influent flow meter, its request to implement Phase 2 rates at this time is denied.² KUC shall further explore installation of an influent flow meter consistent with the discussions of the May 31, 2018 meeting and file under this Cause supporting vendor estimates for the purchase and installation of an influent flow meter within 60 days of this Order. The OUCC shall have 20 days to file any response or objection to the updated estimates.

If no response or objection is filed, KUC shall install the influent flow meter. After installation of the meter, KUC shall file under this Cause revised schedules reflecting actual costs of the influent flow meter, other capital project costs consistent with our determinations above, and the actual cost of long-term debt.

² Although the Commission authorized interim implementation of Phase 2 rates in its January 17, 2018 Order, KUC has not implemented those rates and may not do so now.

If a response or objection is filed, KUC shall file any reply within 10 days. The Commission will then proceed to issue a decision on any response or objections.

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

1. KUC's request to implement Phase 2 rates is denied.
2. This Order shall be effective on and after the date of its approval.

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

APPROVED: JUL 05 2018

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



Mary M. Becerra
Secretary of the Commission

