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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF INDIANA WATER SERVICE,)
INC. FOR APPROVAL OF (A) A)
DISTRIBUTION SYSTEM IMPROVEMENT)
CHARGE ("DSIC") PURSUANT TO IND.)
CODE CHAP. 8-1-31; (B) A NEW RATE)
SCHEDULE REFLECTING THE DSIC; AND)
(C) INCLUSION OF THE COST OF)
ELIGIBLE DISTRIBUTION SYSTEM)
IMPROVEMENTS IN ITS DSIC)

CAUSE NO. 42743 DSIC 3

APPROVED

OCT 14 2015

ORDER OF THE COMMISSION

Presiding Officers:

Angela Rapp Weber, Commissioner

David E. Veleta, Administrative Law Judge

On June 30, 2015, Indiana Water Service, Inc. ("Petitioner") prefiled with the Indiana Utility Regulatory Commission ("Commission") its Petition and supporting testimony and exhibits for approval of a new distribution system improvement charge ("DSIC") pursuant to Indiana Code ch. 8-1-31. On July 30, 2015, the Indiana Office of Utility Consumer Counselor ("OUCC") filed pursuant to Indiana Code § 8-1-31-9 and 170 IAC 6-1.1-5(a) the testimony of Utility Analysts Richard J. Corey and Harold L. Rees. On August 6, 2015, Petitioner filed its Notice of Settlement in Principle and Request for an Extension of Time ("Notice of Settlement"). On August 12, 2015, Petitioner filed a Stipulation and Settlement Agreement between the OUCC and Petitioner ("Settlement Agreement") along with settlement testimony. Also, on August 12, 2015, the OUCC filed the settlement testimony of Mr. Corey.

The Commission conducted a hearing on August 24, 2015, at 1:30 p.m. in Room 224 of the PNC Center, 101 W. Washington Street, Indianapolis, Indiana. At the hearing, Petitioner and the OUCC appeared by counsel and the parties offered their prefiled testimony and attachments, which were admitted into evidence without objection. No members of the public appeared or participated in the evidentiary hearing.

Based upon the applicable law and the evidence of record, the Commission now finds:

1. Notice and Jurisdiction. Notice of the public hearing in this Cause was given and published as required by law. Petitioner is a public utility within the meaning of that term in Indiana Code § 8-1-2-1 and is subject to the jurisdiction of the Commission in the manner and to the extent provided by the laws of the State of Indiana. Pursuant to Indiana Code ch. 8-1-31, the Commission has authority to review a utility's DSIC request. Therefore, this Commission has jurisdiction over Petitioner and the subject matter of this proceeding.

2. **Petitioner's Characteristics.** Petitioner is a subsidiary of Utilities, Inc., which owns over 70 systems providing utility service to approximately 266,000 customers in 15 states. Petitioner owns, operates, manages, and controls plant and equipment that are used and useful in the provision of water services in Lake County, Indiana. Petitioner currently serves approximately 1,650 water customers.¹

3. **Relief Requested.** Petitioner seeks approval of a DSIC pursuant to Indiana Code ch. 8-1-31, a new rate schedule reflecting the DSIC, and approval of the eligible distribution system improvements in Petitioner's DSIC. Petitioner's most recent rate order was approved in Cause No. 44097 on November 7, 2012. Petitioner's most recent DSIC was approved in Cause No. 42743 DSIC 2 on May 28, 2014.

4. **Petitioner's Direct Evidence.** Petitioner presented the direct evidence of Brian N. Halloran, Financial Analyst II for Utilities, Inc., and Bruce T. Haas, Vice President of Operations for the Midwest Region of Utilities, Inc.

Mr. Halloran testified in support of Petitioner's proposed DSIC. He explained how the proposed DSIC will operate and described the improvements Petitioner proposed to include in its DSIC. He testified that the improvements included with this DSIC filing include non-revenue-producing projects placed in service between July 1, 2011, and May 31, 2015 that were neither included in Petitioner's last rate case, Cause No. 44097, nor reflected in the surcharge approved in Cause No. 42743 DSIC 2. He provided rate schedules and a proposed tariff sheet implementing Petitioner's proposed DSIC rate of \$0.44 per thousand gallons. He stated the resulting percentage is 6.77%, which is less than the 10% cap on DSIC charges.

Mr. Haas sponsored Petitioner's Exhibit BTH-1, which provides project information, including account number, project type, work order number, a general description presented by account number, date placed in service, and total cost incurred. He stated that descriptions of project benefits and needs are presented in the aggregate. He explained that none of the project investments have been included in rate base in prior rate cases. He explained that the projects included in this Cause are either replacement or reinforcement infrastructure and described the general nature of the types of work included. Mr. Haas stated that all of the work identified on Petitioner's Exhibit BTH-1 corresponds to items eligible for inclusion in Petitioner's proposed DSIC rate.

5. **OUCC's Report.** Mr. Rees explained that while Petitioner provided copies of ledgers and invoices that listed purchases from outside vendors and expense accruals and transfers within the utility's accounting system he believed, based on his review, that Petitioner had not adequately supported its case for DSIC recovery of the projects that are the subject of this filing. Mr. Rees testified that the spreadsheet provided by Petitioner provides no information as to what specific projects the individual line items are attributable to, or what the total cost or composition of any project is. Further, Mr. Rees stated that retirements are not traceable back to specific projects and lack detail. In addition, the invoices provided in response to OUCC data request 1.1 contain a mixture of Indiana Water Services and Twin Lakes Utilities data, which

¹ We note that subsequent to the filing of this Petition, Petitioner was merged into Community Utilities Indiana, Inc. pursuant to the Commission's July 8, 2015 Order in Cause No. 44587.

makes interpreting the cost data difficult. Mr. Rees testified that the projects are not traceable by name or project numbers. Further, Mr. Rees stated that while the invoices contain addresses, the way the Petitioner provided the information, the OUCC could not determine what invoices were related. Also, Mr. Rees opined that the work set out in the invoices consisted primarily of emergency repairs to fix water main and service line breaks. Mr. Rees explained that a distribution system plant project is developed through engineering design, planning, and scheduling, whereas emergency repairs usually just put an asset back in service. Additionally, Mr. Rees noted that emergency repairs are more costly because of the need to have the work completed on an expedited schedule. Furthermore, emergency repairs usually result in a short section of pipe being replaced, which results in the overall age of the distribution system remaining unchanged. He stated that because the Petitioner's filing does not coherently identify its proposed DSIC projects, the Commission should deny Petitioner's request for recovery.

Mr. Corey testified regarding the supporting documentation required by the Commission's DSIC rules and his belief that Petitioner's presentation was lacking. Mr. Corey testified that Petitioner provided an excel spreadsheet of expenditures and retirements, but no information as to what specific projects the individual line items are attributable to, or what the total cost of any project is. Mr. Corey noted that Petitioner did not provide any explanation as to why each project is needed or the benefits of the project. Further, Mr. Corey testified that the age of the retired plant was not included in Petitioner's evidence. He noted the expedited timeframe for the OUCC to review DSIC filings, issue and evaluate discovery, and make a determination as to whether the evidence provided is sufficient to render an opinion as to the validity of the request for a rate adjustment. Mr. Corey testified that it is necessary that Petitioner's case-in-chief be in compliance with the Commission's rules. He noted that it is Petitioner's burden to prove that it is entitled to the relief it is requesting.

6. Settlement Agreement. On August 12, 2015, Petitioner and the OUCC filed a Settlement Agreement in this proceeding. The terms of the Settlement Agreement are as follows:

A. Petitioner agrees to withdraw its request to include amounts associated with "1125 – Transmission & Distribution Mains," as well as the amounts associated with capitalized time in its DSIC surcharge calculation.

B. The settling parties stipulate and agree that a water DSIC in the amount of \$0.29 per 1,000 gallons, designed to produce revenues of \$32,264, should be approved.

C. The settling parties agree to work collaboratively to develop a mutually agreeable framework for the presentation of future infrastructure improvement charge requests.

7. Summary of Evidence in Support of Settlement Agreement. Mr. Halloran sponsored the Settlement Agreement and provided an overview of its key terms. He explained that the Settlement Agreement resolves all disputed matters pending before the Commission and provides for a water DSIC charge in the amount of \$0.29 per 1,000 gallons, which includes the amount under-recovered from DSIC 2 of \$3,178. Mr. Halloran also identified the specific

adjustments the settling parties agreed to for purposes of the Settlement Agreement to arrive at the proposed DSIC 3 surcharge.

In response to the OUCC's concerns regarding the level of detail provided by Petitioner, Mr. Halloran testified that the settling parties have agreed to work collaboratively to develop a framework for the presentation of future DSIC filings. He said Petitioner will present its evidence in a format that allows for the ability to identify all costs associated with any one project for which Petitioner is seeking DISC recovery. In addition, he said Petitioner agrees to implement a process to easily identify all capitalized time associated with each project, and will provide a general outline of its plans to replace distribution infrastructure in the next five years.

Mr. Halloran stated that adhering to the framework presented in the Settlement Agreement will provide the OUCC with greater transparency and assistance during the auditing process under the expedited DSIC timeframe. He stated that the Settlement Agreement is the result of serious negotiations and bargaining, with the settling parties evaluating the issues and ultimately reaching a compromise in the public interest to resolve the disputed issues. He testified the Settlement Agreement serves the public interest and should be approved.

Mr. Corey testified that through negotiations, the OUCC agreed to allow Petitioner's DSIC 2 projects to be included for recovery because the Commission has already approved DSIC 2. As for the requested DSIC 3 project costs that Petitioner seeks, he explained that Petitioner has withdrawn its request to recover costs identified as capitalized time and work on mains, specifically all costs associated with Account 1125 Transmission & Distribution Mains. He said the remaining amount (less than \$20,000) had enough support in documents received from Petitioner that the OUCC felt settlement was appropriate. He testified the lower DSIC factor balances Petitioner's need for recovery with customer protection. In addition, he noted Petitioner has agreed to more stringent filing guidelines for future DSICs that, if followed, will provide much easier reviews of DSIC costs and projects in the truncated DSIC filing timeframe.

Mr. Corey described the benefits of the Settlement Agreement and stated that compliance with the procedural requirements set forth in the Settlement Agreement is not intended to constitute a waiver or admission by the OUCC that the cost of any particular job or project is eligible, reasonable, or should otherwise be included in a utility's rate base. He testified that the Settlement Agreement avoids what could have been protracted and costly litigation and sets the stage for a cooperative approach to future DSIC filings. He said the Settlement Agreement also provides bargained-for benefits that are important to each of the settling parties while balancing the interests of each party and promoting public convenience and necessity. He therefore recommended Commission approval of the Settlement Agreement in its entirety.

8. Commission Discussion and Findings.

A. Standard for Commission Review of Settlement Agreements. 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). Any settlement agreement that is approved by the Commission "loses its status as a strictly private contract and takes on a public interest gloss." *Id.* (quoting *Citizens Action Coalition v. PSI Energy, Inc.*, 664 N.E.2d 401,

406 (Ind. Ct. 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 has carefully analyzed the evidence and the proposed Settlement Agreement filed in this proceeding.

B. Evaluation of the Reasonableness of the Settlement Agreement and Whether It Serves the Public Interest. Indiana Code ch. 8-1-31 authorizes the Commission to approve a DSIC in order to allow a water utility to adjust its basic rates and charges to recover a pre-tax return and depreciation expense on eligible distribution system improvements. The Commission’s rules require the following supporting documentation: “[a] description of the DSIC project, an explanation of why the project is needed, the benefits resulting to the utility and its customers upon completion of the project, and the age of the plant that was retired.” 170 IAC 6-1.1-5.

Mr. Haas was asked in his prefiled direct testimony whether Petitioner has provided the level of detail required by 170 IAC 6-1.1-5, to which Mr. Haas responded that “[a] significant number of the projects are relatively small and to provide that level of detail on these individually small projects would result in a cumbersome and extensive filing.” Petitioner’s Exhibit No. 2 at 15. The OUCC raised concerns regarding the level of detail presented by Petitioner. Mr. Corey noted that Petitioner did not describe or itemize the individual projects. Furthermore, Mr. Corey testified that Petitioner provided no explanation as to why each individual project is needed. Additionally, he stated that Petitioner provided no description of the benefits that will result from the DSIC projects. Finally, Mr. Corey testified that Petitioner did not provide the age of the plant that was retired as required by the Commission rules for DSIC. In an attempt to cure the deficiencies of Petitioner’s filing, the OUCC requested invoices and other cost support for the projects listed in Petitioner’s BTH-1. The OUCC provided as part of its evidence copies of contractor invoices that tied to Petitioner’s general ledger, and showed that these expenses are reflected in Petitioner’s financial statements. But the information on the invoices is incomplete and could not be connected to specific projects. While these concerns were subsequently resolved through discussions between the OUCC and Petitioner and ultimately resulted in the Settlement Agreement, no additional evidence was offered by Petitioner to address the initial concerns over the lack of evidence in support of Petitioner’s DSIC projects presented for our approval. As noted above, a settlement must be supported with sufficient evidence. For a settlement involving proposed DSIC charges, the record evidence supporting the settlement must meet the statutory requirements and comply with the applicable Commission rules for DSIC.

Further, as noted by OUCC witness Rees, we find that the invoices appear to represent emergency repairs, which are not appropriate for DSIC recovery because they are not “eligible distribution system improvements.” Eligible improvements are “projects,” which implies that the replacements were made as part of a planned process in order to improve the distribution system. *See also* 170 IAC 6-1.1-5 (setting forth the supporting documentation a utility shall

submit, including a statement and outline for planned replacements over the next five years). Emergency repairs such as those at issue here are made as a reaction to a plant failure, not part of a predetermined planning process. Petitioner's base rates include some level of repair expense to cover ongoing repairs such as those proposed for recovery in this Cause.

170 IAC 6-1.1-7 provides that the Commission shall hold the hearing and issue its order not later than 60 days after the petition is filed, unless good cause is shown to reset the 60 day deadline. In its Notice of Settlement, Petitioner waived the 60-day deadline when it noted that "it would not object to an order being issued a limited period of time beyond the 60 days contemplated by the statute in order to facilitate the Commission's consideration of the relief sought in this proceeding." Nonetheless, it is important to note that while the DSIC statute provides for an expedited review process, a utility that submits a DSIC filing that does not comply with the applicable Commission rules risks not being able to take advantage of the expedited process.

We find that the Settlement Agreement is not in the public interest because Petitioner has not complied with 170 IAC 6-1.1-5.

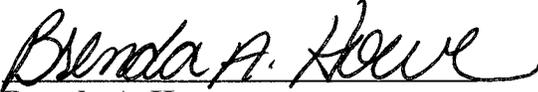
IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. Approval of the Settlement Agreement is hereby denied.
2. This Order shall be effective on and after the date of its approval.

MAYS-MEDLEY, HUSTON, WEBER, AND ZIEGNER CONCUR; STEPHAN ABSENT:

APPROVED: OCT 1 4 2015

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


Brenda A. Howe
Secretary to the Commission