

ORIGINAL

JLG


STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE INDIANA UTILITY) CAUSE NO. 43115
REGULATORY COMMISSION'S INVESTI-)
GATION OF MATTERS RELATED TO THE) PREHEARING CONFERENCE
CONTINUED BUSINESS PRACTICES OF) ORDER ON TRANSFER OF
RIVER'S EDGE UTILITY, INC., IN THE STATE) ASSETS
OF INDIANA PURSUANT TO IND. CODE §§ 8-1-)
2-1(A), 8-1-2-58, 8-1-2-69, 8-1-2-89, ET SEQ.) APPROVED: APR 22 2009

BY THE COMMISSION:

Larry S. Landis, Commissioner

Lorraine Hitz-Bradley, Administrative Law Judge

In August 2006, the Indiana Utility Regulatory Commission ("Commission") received documentation indicating that River's Edge Utility, Inc. ("REUI") may have misrepresented that it had the lawful authority to operate its sewer utility in its application to the Commission in Cause No. 42234 for a certificate of territorial authority ("CTA"). Thereafter, on September 13, 2006, the Commission issued its Order initiating this Cause to conduct "an investigation into matters related to [Respondent's] continued lawful authority to operate, under the CTA issued by [the] Commission under Cause No. 42234."

The Commission conducted its investigation and issued an interim order in this Cause on May 21, 2008, in which it found that REUI had "severe deficiencies it has failed to remedy." Order at 31. The Commission therefore advised REUI that it could show that it had remedied the deficiencies at issue, but as a contingency in the absence of such a showing, the Commission set a hearing to determine the necessity for appointment of a receiver to run REUI. In the interim, REUI was advised that it was obligated to continue providing service to its customers.

On July 1, 2008, REUI filed its *Notice of Relinquishment of Certificate of Territorial Authority and No Opposition to Receivership* ("Notice"). On July 10, 2008, the Office of Utility Consumer Counselor ("OUCC") filed its Response to REUI's *Notice*, in which the OUCC objected to REUI's attempt to unilaterally surrender its CTA without first receiving Commission approval. In addition, the OUCC stated that REUI had a continuing duty to serve until relieved of that obligation by the Commission.

At the July 11, 2008 hearing, REUI and the OUCC appeared. The parties discussed the option of pursuing a buyer for REUI, and the matter was continued until September 17, 2008. Over the ensuing months, REUI moved to continue the case to, respectively, December 15, 2008, February 23, 2009, and finally April 14, 2009, in order to facilitate a potential sale.

On April 14, 2009, a hearing was held at which REUI and the OUCC appeared. Counsel for REUI advised that a potential buyer had been found for REUI. Counsel indicated that the proposed

buyer, Wastewater One, LLC ("Wastewater One") had agreed to purchase REUI contingent upon Wastewater One's ability to obtain a rate increase of up to 60%. The Proposed Agreement had not been consummated as of April 14, 2009. Counsel for the OUCC noted that the OUCC did not agree to such an increase in the absence of an examination of Wastewater One and REUI's books and records. The Presiding Officers advised that Commission approval would be required of the entire proposed transaction.

The Presiding Officers advised that REUI and Wastewater One would need to comply with Commission requirements in order to consummate the proposed transfer of REUI to Wastewater One. The Presiding Officers stated that Wastewater One and REUI must file the proposed agreement to the Commission for review and approval. Thereafter, Wastewater One must petition to intervene in this Cause. Subsequent to the intervention, Wastewater One must file under this Cause a request to assume the certificate of territorial authority of REUI as set forth in Ind. Code § 8-1-2-89 and Commission rules. Wastewater One must also file a request to transfer the assets of REUI and all necessary documentation supporting any requested increase in rates. Consistent with these obligations, the parties agreed to a procedural schedule for the filing of testimony and exhibits.

Based upon the agreement of the parties, the Commission now enters the following Findings and Order which should become a part of the record in this proceeding:

1. **Test Year and Accounting Method.** Because of the absence of test year data, Wastewater One shall file documentation supporting proposed rates through current operation and maintenance costs for REUI and Wastewater One as of December 31, 2008.
2. **Cutoff Date.** The rate base cutoff should reflect used and useful property as of December 31, 2008.
3. **Notice to Customers.** Wastewater One shall provide evidence of its compliance with 170 I.A.C. § 8.5-2-6(c) to provide notice to its customers and current customers of REUI within forty-five (45) days of filing a petition with the Commission for a change in its base rates which fairly summarizes the nature and extent of the proposed changes.
4. **Wastewater One's Prefiling Date.** Wastewater One should prefile with the Commission its prepared testimony and exhibits constituting its case-in-chief on or before June 10, 2009. Copies of same should be served upon all parties of record.
5. **Public's and Intervenors' Prefiling Date.** Public and all Intervenors should prefile with the Commission the prepared testimony and exhibits constituting their respective cases-in-chief on or before August 10, 2009. Copies of same should be served upon all parties of record.
6. **Wastewater One's Rebuttal Prefiling.** Wastewater One should prefile with the Commission its prepared rebuttal testimony on or before August 25, 2009. Copies of same should be served upon all parties of record.

7. **Evidentiary Hearing on the Parties' Cases-In-Chief.** In the event this Cause is not settled, the cases-in-chief of Wastewater One, Public and any Intervenors should be presented in an evidentiary hearing to commence at 9:30 a.m. on September 29, 2009 in Indiana Utility Regulatory Commission Conference Center, Suite 220, Judicial Courtroom 224 at the National City Center, 101 West Washington Street, Indianapolis, Indiana. At such time, the direct evidence of the respective parties should be presented and their respective witnesses examined. Thereafter, Petitioner should present its prefiled rebuttal evidence as well as any additional evidence rebutting evidence adduced on cross-examination of Public's or Intervenors' witnesses. If the parties reach settlement, the agreement should be submitted to the Commission five (5) business days prior to the Evidentiary Hearing.

8. **Sworn Testimony.** Any witness testimony to be offered into the record of this proceeding shall be made under oath or affirmation. In accordance with 170 I.A.C. § 1-1.1-18(h), if the prefiled testimony of a witness is to be offered into evidence at the Evidentiary Hearing, and the witness sponsoring the prefiled testimony is not required to, and does not, attend the Evidentiary Hearing, the prefiled testimony shall be accompanied by the witness's sworn affidavit or written verification at the time the evidence is offered into the record.

9. **Discovery.** Discovery is available for all parties and should be conducted on an informal basis. Any response or objection to a discovery request should be made within ten (10) calendar days of the receipt of such request. After August 10, 2009, discovery shall be responded to within five (5) business days.

10. **Prefiling of Workpapers.** When prefilng technical evidence with the Commission, each party should file copies of the work papers used to produce that evidence within two (2) business days after the prefilng of such technical evidence. Copies of same should also be served on the other parties to this Cause. When submitting workpapers to the Commission, two (2) copies of each document should be filed with the Secretary of the Commission.

11. **Number of Copies/Corrections.** With the exception of work papers, the parties shall file with the Commission an original and five (5) copies of all prefiled testimony and exhibits. Any corrections to prefiled testimony shall be made in writing as soon as possible after discovery of the need to make such corrections. Although the Commission's rules require that original copies be one-sided, it is the Commission's preference that duplicate copies use both sides of the paper.

Parties may also elect to file documents with the Commission using the Commission's Electronic Filing System in lieu of filing paper documents. Pursuant to the terms and conditions of the Electronic Filing System, documents filed electronically are deemed filed the date they are submitted, subject to verification and acceptance by the Commission, and will receive an electronic file stamp. For filings greater than thirty (30) pages in length, a party shall file with the Commission an original and one (1) paper copy within two (2) business days of the electronic filing. When supplying such copies, the party must provide a copy of the email reflecting the electronic filing was accepted by the Commission.

12. **Intervenors.** Any party permitted to become an Intervenor in this Cause should be bound by the record as it stands at the time its Petition to Intervene is granted, pursuant to 170 I.A.C. § 1-1.1-11.

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

1. The determinations of the Prehearing Conference set forth in this Order are made a part of the record in this Cause and shall be binding on all present and future parties of record during the proceedings of this Cause.

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

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

APPROVED: APR 22 2009

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



Brenda A. Howe
Secretary to the Commission