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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF WATER SERVICE )	
COMPANY OF INDIANA FOR )	
AUTHORITY TO INCREASE ITS )	CAUSE NO. 44104
WATER AND SEWER RATES AND )	
CHARGES AND FOR APPROVAL OF A )	APPROVED:
NEW SCHEDULE OF RATES AND )	APR 03 2013
CHARGES APPLICABLE THERETO )	

NUNC PRO TUNC ORDER OF THE COMMISSION

**Presiding Officers:**  
**Carolene Mays, Commissioner**  
**Gregory R. Ellis, Administrative Law Judge**

On March 27, 2013, the Indiana Utility Regulatory Commission (“Commission”) issued its Final Order in this Cause. Upon further review of the March 27, 2013 Order, it has come to the attention of the Commission that the Dissenting Opinion of the Order contained typographical errors. The correct version of the Dissenting Opinion in this Cause is attached to this Order and approved.

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

1. The March 27, 2013 Order in this Cause shall be corrected **Nunc Pro Tunc** as set forth herein.
2. This Order shall be effective on and after the date of its approval.

**ATTERHOLT, LANDIS, MAYS AND ZIEGNER CONCUR; BENNETT ABSENT:**

**APPROVED: APR 03 2013**

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

*Brenda A. Howe*  
 Brenda A. Howe  
 Secretary to the Commission

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF WATER SERVICE )  
COMPANY OF INDIANA FOR )  
AUTHORITY TO INCREASE ITS WATER ) CAUSE NO. 44104  
AND SEWER RATES AND CHARGES )  
AND FOR APPROVAL OF A NEW ) APPROVED:  
SCHEDULE OF RATES AND CHARGES )  
APPLICABLE THERETO )

DISSENTING OPINION OF  
COMMISSIONER LARRY S. LANDIS

One of the most challenging aspects in the preparation of this dissenting opinion is to know where to start in terms of identifying and outlining the egregious dysfunctionality reflected by the Petitioner in its pre-filed testimony and what appears to be an almost outright evasion of key questions raised in the course of the proceeding.

Perhaps the best way in which to start is to suggest that as executed by Petitioner, their business model which posits no full-time staff present “on the ground,” coupled with an apparent disconnect from reality on the part of corporate management, has resulted in an almost total lack of meaningful communication between corporate executives and virtually any of Petitioner’s stakeholders, including the Indiana Utility Regulatory Commission (“Commission”); the Indiana Office of Utility Consumer Counselor (“OUCC”); any state, county, or local officials; or any customers. This total lack of communication appears to extend from the time Utilities Inc. acquired the water and sewer properties early in the last decade.

There was a conference call in August of 2010 between representatives of Utilities Inc. and several staff members of the Water/Sewer Division of the Commission, the majority of which was devoted to the Twin Lakes property. A year later, a manager from the Water Service Company of Indiana (“WSCI”) called the director of the Water/Sewer Division to inform him that WSCI would be filing a rate case. The formal petition was filed on October 28, 2011. The Commission Staff has not been able to confirm any meeting with the OUCC other than contact directly related to the preparation of testimony on the part of OUCC. WSCI’s initial notice to customers did not properly reflect the rate increase in its initial filing and it wasn’t properly noticed until three months after the Case-in-Chief was filed. No mention was made of the exact percentage increase WSCI was seeking.

It appears that many of the decisions made in the ensuing years following acquisition of the property by Utilities Inc. were made in a total vacuum. Recommendations made by retained consultants with regard to appropriate steps which might need to be taken to upgrade the property and make it viable over the intermediate term were disregarded. The total evasion of any meaningful response to bench questions regarding why the company ignored

recommendations of one consultant only to resort to a solution recommended by a second consultant at five times the cost of the original recommendation, and then to fail to manage the project to the initial project budget is inexcusable.

Given the outrageous representation of the Petitioner with regard to the time purportedly invested and the costs allegedly involved in preparation for this rate case, all made without a semblance of meaningful support or justification, it is inconceivable that Petitioner's witnesses were so ill prepared and unresponsive to questions from the OUCC and from the bench. It is difficult to avoid the conclusion that Petitioner consciously avoided providing any witnesses that could shed light on certain of the decisions which could have such a crushing impact on ratepayers.

Mr. Neyzelman and Mr. Haas, in particular, go on at great length with regard to certain aspects of the company's testimony, particularly when it supports the intent and/or convenience of Petitioner, but are almost totally uninformed on the stand when questioned about the decision process that led to the decision to totally rebuild the treatment facilities at a cost of \$1.5 million and then to incur additional expenses with a redesign that ran the cost up to over \$2 million. Paraphrasing, Mr. Haas makes it clear that he wasn't there when the decisions were made and construction took place in the 2007–2008 timeframe, and even the Late-Filed Exhibit #1 is filled with ambiguities regarding the decision process, fails to identify the Respondent, and makes no attempt to describe by whom the decisions were made or, in any detail, on what basis. As this Order notes (at page 20), "...Making the decision to install mechanically aerated concrete package plant that differed significantly from the design assumed for purposes of the 2006 [second] Engineering Report and at [significantly] increased costs, WSCI ultimately chose to pursue an option that was not recommended in either report [emphasis added]." Any attempt or representation by Petitioner which asserts that WSCI's decision is supported by either of the engineering reports is at the very least a stretch of even the sketchy response of Petitioner.

The record and this Order are replete with instances in which Petitioner failed to make its case, provided insufficient supporting evidence to sustain certain representations, and – in some instances – was simply flat-out nonresponsive.

Moreover, WSCI's perspective in certain matters is stunningly self-focused and with near-total disregard for the realities of certain "remedies" sought. For example, Mr. Neyzelman proposes that Petitioner be allowed to move billing to the Campground from seven months, the period of time in which the Campground is open, to 12 months in part because WSCI lacks current flow information from the Campground. In other words, it would be more convenient for WSCI to bill on a monthly basis, as opposed to during the seven months in which the Campground is active. This totally disregards any consideration of cash flow concerns on the part of Campground management. It doesn't take a rocket scientist to determine that when the Campground is closed, little revenue will be coming in, making cash flow management a major challenge for the Campground operator. I applaud my colleagues in this Order for standing fast and refusing to accommodate Petitioner's self-serving request motivated by its apparent utility deficiencies in favor of a more customer-focused approach.

Petitioner's representations with regard to the cost incurred in the preparation of this Rate Case could take up an entire dissent in and of themselves. At the outset, it is outrageous that apparently there was no one in charge of the case who was either capable or willing to manage the process as the stewards of the franchise granted by this Commission should be expected to do. In addition to the table (set forth on page 25 of this Order), the rate expense per customer calculated by Commission Staff results in a claimed rate expense per customer of \$478.95, which tellingly is about 20 times the rate expense per customer associated with Cause No. 43957, the latest rate case of parent company Utilities Inc.'s Indiana affiliate, Twin Lakes, calculated at \$23.77. As this Order notes (at page 9) in quoting witness Ms. Stull of the OUCC, "...\$14, or approximately 20% of each resident's monthly bill, represents recovery of Petitioner's estimated Rate Case expense." This over the top, apparently totally unmanaged cost can only be said to be reflective of ignorance, arrogance or inept management.

In addition to other extreme outlying and/or poorly-or un-justified representations of Rate Case expenses, I note that Petitioner initially proposed to include \$85,000 of legal expenses in this Cause, but when pressed by the bench, in Late-Filed Exhibit #1 Petitioner acknowledged that in reality it had incurred approximately \$32,000 in legal expenses, or slightly above the one third what it initially proposed.

In closing, I return to the apparent total disconnect between the Petitioner and its stakeholders. Mr. Fish of the OUCC indicates (at page 11 of this Order) that 141 homes of the "...approximately 194 customers..." reside in mobile homes (manufactured housing) which is typically occupied by individuals of relatively modest means and/or fixed incomes. It should be apparent to the most casual observer that Mr. Fish of the OUCC refers to customer comments received in this proceeding and to the fact that the dramatic "... water and sewer rate increase may have a devastating impact on many customers, with the Campground being particularly impacted by the increase. (this Order at p. 13)" While the record does not contain detailed information regarding the impact of the recent recession and slow-growth recovery, it is likely that the Campground would have already felt a disproportionate impact on revenues as middle-income and modest-income families sought to cut back on discretionary spending such as leisure activities and family vacations. Mr. Fish goes on to suggest that Petitioner could be placing itself in a position to lose the Campground as a customer, presumably either because the Campground might fail due to the added burden of significantly increased utility fees, or because the Campground might seek an alternative solution to its sewage disposal issue. Indeed, with the Campground constituting approximately 25 percent of the total revenues of the wastewater utility, if the utility were to lose that revenue it might well launch the utility into a downward fiscal death spiral, quite possibly dragging the community's entire microeconomy down with it.

The OUCC proposed that action be taken to minimize the rate shock implications of the proposed increase, perhaps by phasing in the increase over a multi-year period. In response, Mr. Neyzelman indicated that "...while he was sympathetic to the OUCC's desire to mitigate the impact of the proposed rate increase he did not agree with the OUCC's recommendation to phase in wastewater rates over a three-year period, explaining that with the adjustments accepted on rebuttal, the rates can and should be implemented in a single phase (this Order at page 17; emphasis added)."

Which leads me to wonder why, if there was such urgency to the increase, there was at least a three-year lag between completion of the wastewater treatment plant and Petitioner's filing of this case. Operating on essentially the same revenue structure and with virtually the same cost structure as reflected in the test year, why was there no urgency expressed during that three-year period, followed by great urgency in the summer of 2011? What other information does the commission not know that might be relevant to a decision in this context?

I fully appreciate the role of the Commission and its need to balance the interests of ratepayers and utilities in proceedings before it. I fully affirm the struggles my colleagues and staff have experienced in wrestling with this case. And I greatly respect my colleagues in their desire to find an acceptable and unanimous solution which minimizes the pain on the parties. Petitioner has done little to bolster its case, strengthen its credibility, or demonstrate that it honors in any respect what ought to be a covenant between a utility and its customers. While I fully appreciate the efforts of staff and my colleagues to hold Petitioner to a standard which it apparently does not share, and to expect Petitioner to make its case as well as its revenue target, I cannot in good conscience support a decision which does not make further allowances for the impact on the ratepayers, which Petitioner has chosen to ignore, and indeed on the micro-economy of the entire community.

I respectfully dissent from the majority opinion in this cause.