

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

APPLICATION OF WEBSTER) CAUSE NO. 44244 U
DEVELOPMENT LLC FOR A NEW)
SCHEDULE OF RATES AND CHARGES) APPROVED:

MAY 22 2013

ORDER ON RECONSIDERATION

Presiding Officers:

Carolene Mays, Commissioner

Marya E. Jones, Administrative Law Judge

On September 4, 2012, Webster Development LLC (“Webster” or “the Utility”) filed with the Indiana Utility Regulatory Commission (“Commission”) its Request for Changes in Rates and Charges pursuant to Ind. Code § 8-1-2-61.5 and 170 IAC 14-1. Webster sought approval to increase its revenues by \$3,695 or 289.28%.

Pursuant to Ind. Code § 8-1-2-61.5, no Evidentiary Hearing was conducted as Webster qualifies as a small utility with fewer than 5,000 customers. On March 27, 2013, the Commission issued an Order approving new rates and charges for sewer service.

On April 16, 2013, the Indiana Office of Utility Consumer Counselor (“OUCC”) filed a Verified Petition for Reconsideration or Alternatively for Leave to Present Additional Evidence on Rehearing (“Petition for Reconsideration and Rehearing” or “Petition”), requesting that the Commission reconsider its decision with regard to the rates and charges set forth in its Order dated March 27, 2013. Webster filed its Response to the OUCC’s Petition for Rehearing and Reconsideration on April 26, 2013 requesting the Commission approve the OUCC’s Petition in its entirety.

1. Commission Jurisdiction. The bases for our jurisdiction over the parties and subject matter of this proceeding are set forth in our March 27, 2013 Order, which bases are hereby incorporated into this Order on Reconsideration. The Commission has jurisdiction over the parties to, and the subject matter of, this proceeding.

2. Petition for Rehearing and Reconsideration. The OUCC, in its Petition for Reconsideration and Rehearing, requests the Commission reconsider its approval of the rates and charges approved on March 27, 2013 for the following reasons. First, the OUCC argues that the sewer utility rates should be reduced and set at the level recommended by the OUCC while this matter was pending before the Commission. Specifically, the OUCC requests the Commission reduce the approved monthly sewer utility rate for customers without utility-provided meters from \$132.86 to \$98.60, and to reduce the approved monthly rate for customers using utility-provided meters from \$134.86 to \$100.60. Second, the OUCC asserts that the Utility’s owner, Larry Webster, contacted the OUCC and confirmed his desire to set the rates at the levels recommended by the OUCC instead of the higher rates ordered by the Commission. Third, the

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OUCC noted that Webster's customers strongly opposed the Utility's requested 289.28% rate increase, as evidenced by the Utility's customer comments included as Attachment 6 to the OUCC's Report. The OUCC further contends that if this request is granted, the lower rates it proposed would lessen the severity of the rate shock Webster's customers will experience if the rates approved in the Commission's March 27, 2013 Order are implemented. Finally, the OUCC argues that in the alternative, if the Commission determines that reconsideration should be denied, the OUCC requests approval for the parties to present additional evidence on rehearing to clarify the Utility's request to approve monthly sewer rates at a lower level than might otherwise be permitted under Indiana law until more houses are built and occupied in Sonesta Bay.

3. Response of Webster. Webster's response addresses each of the OUCC's arguments for reconsideration. First, Webster notes that after the Commission issued its Order on March 27, 2013, the owner of the Utility contacted the OUCC to attempt to reduce the sewer utility rates to the specific dollar amounts initially recommended by the OUCC: \$98.60 for the customer providing his own electric meter and \$100.60 for the customers with utility-provided meters. Second, Webster acknowledged the strong customer opposition to the rate increase proposed in its application and asserted the lower rate recommended by the OUCC, if granted, would lessen the severity of its customers' rate shock. Third, Webster affirmed that the lower rates proposed by the OUCC would provide sufficient revenue to properly maintain the utility absent any major damage or unexpected major repairs. If additional revenue is needed in the future, Webster is aware that it can file another rate case fifteen (15) months after the filing of this Cause, and under certain circumstances, it may request emergency rate relief from the Commission in a more formal regulatory proceeding. Finally, Larry Webster stated that as owner of both the utility and the unsold real estate in Sonesta Bay, he supports the lower rates because they are closer to the monthly rates charged by other small wastewater utilities in Indiana based on the list included in the OUCC's December 26, 2012 report. Mr. Webster concluded that if more homes are built in Sonesta Bay, the number of utility customers will increase and strengthen the Utility's future revenue stream. Whereas if rates are set too high, it may hamper the ongoing efforts to sell the remaining lots in Sonesta Bay.

4. Commission Discussion and Findings. 170 IAC 1-1.1-22(e) allows a party to file a petition for rehearing and reconsideration within twenty days after the entry of a final order. 170 IAC 1-1.1-22(e)(3) lists the possible actions that we may take in deciding a petition for reconsideration, including upholding our original order, modifying our original order based on the existing record without further hearing, reopening the evidentiary record, or reversing our original order. In its Petition for Reconsideration and Rehearing, the OUCC asks us to reconsider our findings and conclusions regarding the wastewater utility rates or in the alternative to reopen the record in this Cause to introduce clarifying evidence regarding Mr. Webster's request as a real estate developer affiliated with the Utility, to approve monthly sewer utility rates at a lower level than might otherwise be permitted under Indiana law, or at least until more homes are built in Sonesta Bay. The Utility joins the OUCC in this request.

In this Cause, Webster requested approval to increase its revenues by \$3,695 or 289.28%, but indicated it was not seeking a return on rate base or depreciation expense, only the recovery of operation and maintenance ("O&M") expenses. Webster proposed O&M expense of \$4,598. The OUCC recommended a slightly smaller revenue increase of \$3,597 and a slightly higher

O&M expense of \$4,730. The OUCC indicated that, for residential customers using approximately 5,000 gallons, its recommended changes resulted in proposed sewer rates of \$98.60 for the customer providing his own electric meter and \$100.60 for the customers with utility-provided meters.

The Commission in its March 27, 2013 Order found the OUCC's proposed revenue requirements reasonable and accepted the proposed adjustments, but noted that the rates proposed by the OUCC contained a mathematical error. After correcting the error, the Commission approved, for residential customers, a new rate of \$132.86 for a customer with his own electric meter and \$134.86 for customers with utility-provided meters. Consequently, the approved sewer rates were significantly higher than either Webster or the OUCC anticipated and has resulted in the parties seeking reconsideration by the Commission.

We affirmatively stated our concern for future development and the addition of other customers given the magnitude of the requested increase in rates in our March 27, 2013 Order. The OUCC noted that start-up utilities with affiliated developers often choose to set initial rates lower than allowable under Indiana law based on the expectation that customers will soon be added. The OUCC indicated it would only be supportive of lower rates under certain specified conditions. However, we declined to condition approval of Applicant's rates as proposed by the OUCC. First, as noted by the OUCC, Webster did not present any evidence concerning the depreciated book value or the fair value of utility plant in service necessary for making a determination on a reasonable rate of return for the utility. Moreover, considerations regarding used and useful and contributions in aid of construction would also be considered. Without sufficient evidence, we were unable to conclude what rate of return, if any, Webster would be entitled to receive. Therefore, we declined to impose a requirement that Webster's affiliated land developer provide any disclosure concerning the utility's wastewater rates. And second, no evidence was offered by either the OUCC or Webster indicating that the proposed rates would be inadequate to properly operate and maintain the utility.

In spite of the foregoing, we recognized as reasonable and appropriate the OUCC's recommendation that Webster be required to adjust its rates when new customers are added to the system. Though we were unable to approve the OUCC's suggested alternative regulatory approach, the Utility was directed to file another small utility rate application, or a docketed proceeding requesting approval to adjust its rates through the use of an alternative regulatory process, when an increase in the Utility's number of customers next occurred.

We accept Webster's affirmation that the lower rates proposed by the OUCC will provide sufficient revenue to properly maintain the utility absent any major damage or unexpected major repairs. We further agree with the Utility that if additional revenue is needed in the future, Webster can file another rate case fifteen (15) months after the filing of this Cause, and under certain circumstances, may request emergency rate relief from the Commission in a more formal regulatory proceeding. Finally, we also agree with both Webster and the OUCC that the lower rates initially proposed by the OUCC would serve to lessen the rate shock for existing customers.

Therefore, we find that the OUCC's Petition for Reconsideration should be granted. Webster is authorized to increase its rates and charges by \$2,320 annually, to produce total

annual revenue of \$3,597, which represents a 181.72% increase in its rates and charges and the March 27, 2013 Order is amended to reflect the same.

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

1. The OUCC's Petition for Reconsideration is hereby granted.
2. The March 27, 2013 Order is amended as reflected herein and Webster is hereby authorized to increase its rates and charges by \$2,320 annually, to produce total annual revenue of \$3,597, which represents a 181.72% increase in its rates and charges.
3. Prior to placing into effect the rates and charges approved herein, Webster shall file a schedule of rates and charges for the purpose of accomplishing the findings set forth above, with the Water/Sewer Division of the Commission. Such rates and charges for wastewater service will become effective upon approval thereof by the Water/Wastewater Division of the Commission and shall cancel all prior rates and charges.
4. This Order shall be effective on and after the date of its approval.

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

APPROVED: **MAY 22 2013**

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



Brenda A. Howe
Secretary to the Commission