

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:

MAR 27 2013

ORDER OF THE COMMISSION

**Presiding Officers:**

**Carolene Mays, Commissioner**

**Marya E. Jones, Administrative Law Judge**

On September 4, 2012, Webster Development LLC ("Applicant" or "Webster") 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 seeks approval to increase its revenues by \$3,695 or 289.28%.

On December 26, 2012, as required by 170 IAC 14-1-4(a), the Indiana Office of Utility Consumer Counselor ("OUCC") filed its report, making adjustments to Applicant's revenue requirement calculations and recommending the Commission approve a slightly lower increase of 281.68% in Applicant's base rates.

Pursuant to Ind. Code § 8-1-2-61.5, a formal public hearing is not required in rate cases involving small utilities with fewer than 5,000 customers, unless a hearing is requested by at least ten customers, a public or municipal corporation, or by the OUCC. Although three (3) customers requested a public hearing, the OUCC, which is the statutory representative of ratepayers and the public, did not request a formal public hearing. Accordingly, no hearing is required or has been held.

Based upon the applicable law and the evidence presented herein, the Commission now finds as follows:

**1. Commission Jurisdiction and Notice.** Applicant is an Indiana limited liability company that provides wastewater utility services. Applicant is a "public utility" within the Public Service Commission Act, as amended, and the Commission has jurisdiction over Applicant and the subject matter of this proceeding.

In accordance with 170 IAC 14-1-2(d), Applicant published notice of its filing in the *Kokomo Tribune* on September 14, 2012 and provided notice to its customers on September 11, 2012.

**2. Applicant's Characteristics.** Webster is an investor owned, for-profit wastewater utility which provides wastewater utility services to three (3) residential customers who reside in Sonesta Bay subdivision in Howard County, Indiana. Webster owns and operates a

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drip field wastewater treatment system intended and designed to provide service to the entire Sonesta Bay subdivision (“Sonesta Bay”) when fully developed. The subdivision was designed to have at least nineteen (19) lots.

3. **Relief Requested.** Webster requests approval to increase its revenues by \$3,695 or 289.28%. Webster indicates that it is seeking neither a return on rate base nor depreciation expense, only the recovery of operation and maintenance expenses.

4. **Test Period.** The test period selected for determining Applicant’s revenues and expenses reasonably incurred in providing wastewater utility service to its customers includes the twelve (12) months ending December 31, 2011. The Commission finds that this test period sufficiently represents Applicant’s normal operations to provide reliable data for ratemaking purposes.

5. **Operating Revenue.** Webster’s pro forma present annual operating revenue is \$1,277. The OUCC agreed with this amount in its report.

6. **Revenue Requirements.** Webster requests approval to increase its revenues by \$3,695 or 289.28%, but does not seek 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 recommends a slightly smaller revenue increase of \$3,597, which is a 281.68% rate increase. The OUCC, in its report, proposed O&M expense of \$4,730.

With respect to O&M expenses, the Commission agrees with the OUCC’s recommendation to eliminate Webster’s purchased power adjustment. Webster proposed an increase of \$566 to power expense, but the OUCC determined that no adjustment was necessary because there was no increase in the test year expense. The OUCC also modified Webster’s O&M expense for insurance. Webster proposed a decrease of \$339 to insurance expense. However, the OUCC proposed a pro forma insurance expense adjustment of \$23 (\$362 - \$339 test year expense). Based on an invoice provided by Webster, the OUCC proposed pro forma insurance expense of \$362. Additionally, the OUCC modified Applicant’s O&M expenses for rate case, contract services, postage and property tax. Specifically, the OUCC determined that the pro forma rate case expense of \$100 amortized over five (5) years yields an increase of \$20 per year over test year operating expenses. The Applicant’s test year expense for quarterly contract sewer maintenance services also included payments for only three (3) quarters rather than four (4). As a result, the OUCC found an increase of \$300 necessary for test year operating expenses. The OUCC further determined changes in the pro forma expenses for postage to be \$16, and \$89 for property tax. Webster did not oppose any of these adjustments to its requested revenue requirement made by the OUCC. The Commission, therefore, finds the OUCC’s adjustments for O&M expenses and taxes are reasonable.

Finally, the gross revenue conversion factor calculates the amount of certain operating expenses and taxes associated with the proposed change in revenue. Any proposed revenue increase must therefore be “grossed up” for a utility to earn its authorized net operating income. Webster proposed a gross up of \$370 and the OUCC proposed a gross up of \$50, which includes utility receipts tax. Webster calculated a gross revenue conversion factor of 111.12084%, while

the OUCC proposed a gross revenue conversion factor of 101.41988%. The OUCC adjusted the gross revenue conversion factor because: (1) Webster's annual utility fee would be less than \$50 so that no Commission fee payment is required pursuant to Ind. Code § 8-1-6-4; and (2) as a Limited Liability Company ("LLC"), Webster pays no state income tax; instead, all of the profits and losses of the LLC "pass through" the business to the LLC owners, who report this information on their personal tax returns. Webster did not oppose the OUCC's adjustments. Therefore, the Commission finds that the OUCC's proposed gross revenue conversion factor of 101.41988% is reasonable.

7. **Other Recommendations by the OUCC.** The OUCC made several additional recommendations for Applicant.

A. **Service Failures.** In its report, the OUCC noted several issues that have occurred regarding service reliability. First, the OUCC noted that after the original installation of the drip field, a nearby lightning strike caused a pump motor and associated control circuitry to fail. In addition, the OUCC reported that a few years ago one of the drip field's connection pipes from a media tank to the street sewer line failed and the pipe had to be dug up and replaced in inclement weather. Although the OUCC reported that Webster believes the drip field wastewater system has been generally reliable, the OUCC also included in its report a copy of a customer letter dated October 5, 2012, asserting that the system continues to malfunction and has had sewage back up in his house.

The OUCC noted in its report that Webster's original alarm system automatically transmitted a signal by telephone to the maintenance contractor to facilitate prompt repairs when needed, but that the alarm system has since been changed. Therefore, the OUCC recommended that if service problems or response times increase in the future, the use of an automatic telephone, text or e-mail alarm system should be reconsidered by Applicant.

B. **Financial Recordkeeping.** The OUCC expressed concern in its report that the utility's financial records are combined with Mr. Webster's personal records and those of Webster Development LLC and the Sonesta Bay development project. The OUCC asserted that this comingling of financial records may be preventing the preparation of a balance sheet for the utility. The OUCC recommended that the Commission require Applicant to submit balance sheets for future annual reports and in future cases involving rate changes, asset transfers or other financial issues. The Applicant provided no response to this recommendation. The Commission finds that Applicant shall submit balance sheets for future annual reports and in future cases involving rate changes, asset transfers or other financial issues that conforms to the NARUC Uniform System of Accounts for Class C Wastewater utilities and generally accepted accounting principles.

C. **Future Rates and Operations.** The OUCC's report noted that initially, each lot in Sonesta Bay was to have its own septic system. The Howard County Health Department approved the use of septic tanks with fingers for four (4) lots. Three (3) of the four (4) lots sold and two homes have individual septic tanks with finger systems. However, shortly after the two (2) homes were built, the Health Department reversed its policy on the use of single-home septic systems and prohibited their use in future construction at Sonesta Bay. That

change in policy prompted the Health Department to recommend a drip field wastewater system for the remaining lots in Sonesta Bay. Two (2) lots were reserved and used for the drip field system which was constructed in 2002 by Earthtek Environmental Systems, Inc.

Subsequently, three (3) lots were sold and each receives sewer utility service from the wastewater drip field. Webster collected a onetime fee of \$13,500 from each homeowner to offset construction costs including the installation of septic tanks (without finger systems), media tanks, pumps and piping to the drip field. Currently there are 13 lots approved for drip field use at Sonesta Bay. However, as stated above, the drip field system is designed to serve the entire subdivision, including the two houses with conventional septic systems if either one or both of those systems fail in the future.

The OUCC noted that Applicant was not seeking in this proceeding a return on rate base. Recognizing 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 in this instance if: (1) Applicant's affiliated land developer disclosed to prospective purchasers that the wastewater utility is voluntarily charging rates lower than the utility could lawfully charge; and (2) Applicant's wastewater utility system could be properly operated and maintained at the lower rates. In addition, because of the significant increase in rates proposed by Applicant, the OUCC also recommended that the Commission authorize Applicant to proportionately decrease rates from the levels approved herein as it gains customers in Sonesta Bay. The OUCC suggested the Commission could approve an alternative regulatory approach that would permit future reductions for all affected customers without requiring another rate proceeding.

Based on the evidence presented, the Commission declines to condition approval of Applicant's rates as proposed by the OUCC. First, as noted by the OUCC, Applicant 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 cannot conclude what rate of return, if any, Applicant would be entitled to receive. Therefore, we decline to impose a requirement that the Applicant's affiliated land developer provide any disclosure concerning the utility's wastewater rates. And second, no evidence was offered by either the OUCC or Applicant indicating that the proposed rates would be inadequate to properly operate and maintain the utility.

Regarding the OUCC's recommendation that Applicant be required to adjust its rates when new customers are added to the system, the Commission finds such recommendation to be reasonable and appropriate. However, we cannot, at this time, approve an alternative regulatory approach as suggested by the OUCC. Ind. Code § 8-1-2-61.5(d) and (e) authorizes the Commission to approve the use of alternative regulatory procedures only if it finds, after notice and an evidentiary hearing, that such procedures are in the public interest and promote at least one of four criteria. Because notice and a hearing concerning the consideration of an alternative regulatory procedure did not occur, the Commission cannot approve the OUCC's suggestion for an automatic rate adjustment upon the addition of new customers. Therefore, when an increase in the utility's number of customers next occurs, Applicant shall either file another small utility rate

application or a docketed proceeding requesting approval to adjust its rates through the use of an alternative regulatory process.

Finally, we note that Applicant has been certificated since 2003, but has only added 3 customers. While we are aware that the economy has likely been a key factor in the lack of development in Sonesta Bay, we remain concerned with the possibility for future development and the addition of other customers given the magnitude of the requested increase in rates. The OUCC also indicated that Applicant's owner, Mr. Webster, is nearing retirement and has expressed an interest in selling the utility. It is also possible that Applicant's current customers may choose to explore possible alternatives to receiving utility service from Applicant, such as installation of a private onsite system. Therefore, in light of the foregoing, we find that Applicant shall explore possible future courses of action to ensure that the utility is capable of providing reliable service at a just and reasonable cost to its customers. Such possibilities may include sale of the utility; assistance in efforts by Applicant's affiliated developer to develop the subdivision; investigation of potential investors in the utility; consultation with its customers concerning future operation of the utility, which may also include discussions with the OUCC and the Howard County Health Department. Applicant shall report the activities undertaken and findings of its investigation to the Commission under this Cause within six (6) months of the date of this Order.

**8. Conclusion.** The Commission finds that the OUCC's proposed revenue requirements are reasonable, and accepts the adjustments proposed in OUCC Schedules 1 through 5 to produce additional net annual revenue of \$3,597 for a 281.68% increase in revenue from rates. Based on the evidence presented, the Commission finds the revenue requirements and rates as set forth in the following table should be approved.

<u>Revenue Requirements:</u>	
Required NOI	\$ -
Less NOI at present rates	<u>(3,546)</u>
Increase in NOI required	3,546
Gross Revenue Conversion Factor	<u>1.0142</u>
Recommended Revenue Increase	<u>\$ 3,597</u>
Percent Increase	<u>281.68%</u>
 Net Revenue Requirements	 <u>\$ 3,597</u>

Two of Webster's three customers pay \$36.81 per month, while the third customer pays \$34.81 per month due to differences in electric metering arrangements for wastewater system pumps used in the treatment process. Neither Webster nor the OUCC proposed a change to the \$2 rate differential between customers with, and those without, electric meters. The Commission finds that the rate differential does not need to be adjusted at this time. Although the Commission accepted the OUCC's proposed revenue increase, the rates proposed by the OUCC are incorrect. The OUCC's proposed rate of \$98.60 is actually only 183.25% higher than the utility's current rate of \$34.81 ( $\$34.81 \times 1.8325 = \$98.60$ ). If one applies the OUCC's proposed 281.68% rate increase to the utility's current rates, the result is a new rate of \$132.86. ( $\$34.81 \times 2.8168 =$

\$98.05 rate increase + \$34.81 current rate = \$132.86). Therefore, a residential customer using approximately 5,000 gallons of water per month will experience a monthly bill increase of \$98.05.

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

1. Consistent with the above findings, Webster is hereby authorized to increase its rates and charges by \$3,597 annually, so as to produce total annual revenue of \$4,874, which represents a 281.68% increase in its rates and charges.

2. 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.

3. Applicant shall submit balance sheets for future annual reports and in future cases involving rate changes, asset transfers or other financial issues.

4. Applicant shall file a report of its activities undertaken and its findings concerning future operation of the utility under this Cause within six (6) months of the date of this Order as required by Paragraph 7(c).

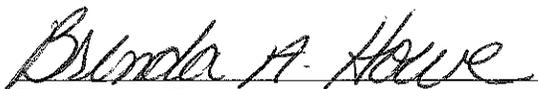
5. Within sixty (60) days of an increase in the Utility's number of customers, Applicant shall file with the Commission a small utility rate application.

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

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

**APPROVED: MAR 27 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**