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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF)
KINGSBURY UTILITY CORPORATION, A FOR-)
PROFIT WATER AND WASTEWATER INDIANA)
CORPORATION FOR AUTHORITY TO ESTABLISH)
CERTAIN NON-RECURRING CHARGES; SYSTEM)
DEVELOPMENT CHARGES; TO ISSUE LONG-)
TERM DEBT; APPROVAL OF NEW RULES AND)
REGULATIONS; AND FOR APPROVAL OF A)
CHANGE IN ITS RATES AND CHARGES)
THROUGH A TWO-PHASE PROCEEDING)

CAUSE NO. 44327

PHASE I ORDER

APPROVED:

SEP 11 2013

ORDER OF THE COMMISSION

Presiding Officers:
Carolene Mays, Commissioner
David E. Veleta, Administrative Law Judge

On March 27, 2013, Kingsbury Utility Corporation (“Petitioner” or “Kingsbury”) filed with the Indiana Utility Regulatory Commission (“Commission”) a Verified Petition requesting authority to adjust its rates and charges, approve new rules and regulations and seek authority to issue financing in a two-phase proceeding. Phase I will address approval of new rules and regulations, a proposed system development charge, certain non-recurring charges and a proposed excessive strength surcharge. Phase II will address Petitioner’s request to issue long-term debt and change its rates.

On March 27, 2013 and April 29, 2013, Kingsbury filed its Phase I case-in-chief. On June 14, 2013, the Indiana Office of Utility Consumer Counselor (“OUCC”) filed its Phase I prefiled testimony and exhibits. On June 28, 2013, Kingsbury and the OUCC filed a Settlement Agreement for Phase I of this proceeding (“Settlement Agreement”) with the Commission. On July 12, 2013, the Presiding Officers issued a Docket Entry requesting additional information. On July 16, 2013, the OUCC and Kingsbury filed responses.

Pursuant to notice of hearing given as provided by law, proof of which was incorporated into the record by reference and placed in the official files of the Commission, an evidentiary hearing in this Cause was held at 11:00 a.m. on July 17, 2013 in Room 222, PNC Center, Indianapolis, Indiana. Kingsbury and the OUCC appeared and participated in the evidentiary hearing. At the hearing, Kingsbury and the OUCC introduced into the record their Phase I testimony and exhibits, including the Settlement Agreement. A technical conference was held on the date of the evidentiary hearing in order to provide an opportunity for the Commission’s Consumer Affairs Division (“CAD”) to discuss the proposed rules and regulations with the Petitioner and OUCC. As a result of those discussions, Petitioner filed revised rules and regulations with the Commission, which were admitted into the record as Petitioner’s Late Filed Exhibit JJ-1a and JJ-2a. No members of the public attended or participated in the evidentiary hearing.

Based upon the applicable law and evidence herein, and being duly advised in the premises, the Commission now finds:

1. **Notice and Jurisdiction.** Due, legal, and timely notice of these proceedings was given and published as required by law. Kingsbury is a public utility as defined in Ind. Code § 8-1-2-1. The Commission has authority to approve rates for utility service under Ind. Code §§ 8-1-2-42 and 61. Thus, the Commission has jurisdiction over Petitioner and the subject matter of this Cause.

2. **Petitioner's Characteristics.** Kingsbury is a for-profit, combined water and wastewater utility that serves residential, commercial, and limited small industrial customers in LaPorte County, State of Indiana. Kingsbury's water and wastewater infrastructure is over sixty years old and was originally installed to serve a United States Army munitions plant covering an area of approximately 3,000 acres.

3. **Relief Requested.** In the Phase I portion of this proceeding, Petitioner seeks Commission approval of new rules and regulations, a proposed system development charge, certain non-recurring charges and a proposed excessive strength surcharge.

4. **Settlement Agreement.** In the Settlement Agreement, the Parties agree to the establishment of excessive strength surcharges for commercial and industrial wastewater service, the establishment of system development surcharges for both water and wastewater service, an increase and addition of the limited, certain non-recurring charges noted in Petitioner's Phase I filing for water and wastewater service, a modification of Petitioner's existing fire protection charges, and the authority to implement rules and regulations for both water and wastewater service.

5. **Evidence of the Parties.**

A. **Petitioner's Case-in-Chief.** Scott Miller presented testimony regarding the initial issues raised in Phase I of this proceeding. More specifically, Mr. Miller prepared and filed an Accounting Report which was submitted as Petitioner's Exhibit SAM-1. Exhibit SAM-1 summarizes the results of studies to support the proposed additions and changes in water and wastewater rates and charges presented in Phase I. Mr. Miller testifies about and supports the calculations underlying the proposed: (1) excessive strength surcharges for commercial and industrial wastewater service; (2) the calculation of the proposed system development charges for both water and wastewater service; (3) the revised fire protection charges; and (4) the calculation of previously nonexistent or revised non-recurring charges for both water and wastewater services.

Jerry Jackson is Kingsbury's licensed Water and Wastewater operator. Mr. Jackson is responsible for reviewing and analyzing various aspects of Kingsbury's plans and operations to ensure compliance with all local, state and federal water and wastewater rules, procedures and requirements. Mr. Jackson sponsored and supported Kingsbury's requested approval of new rules and regulations for both the water and wastewater utilities. Additionally, Mr. Jackson discussed the proposed surcharges for large influent flows into its system. Mr. Jackson noted that at present Kingsbury has one standard

rate for treatment of the flows into its wastewater system. This single rate structure does not account for different strengths or constituent levels of the influent into the wastewater treatment plant and the corresponding additional costs for treating these larger commercial and industrial inflows with potentially higher levels of pollutants or particulate matter. Mr. Jackson also assisted Kingsbury and its rate consultants to assess and arrive at the appropriate constituent levels that are consistent with and will allow Kingsbury to remain compliant with and stay within the local and state Indiana Department of Environmental Management limitations. Mr. Jackson supported and expanded upon some of the detail behind the surcharge levels and the corresponding rate calculations provided in Mr. Miller's testimony. Mr. Jackson provided a general overview of the operational responsibilities and characteristics, limitations, and current and projected abilities of Kingsbury to treat effluent and supported the need for the discharge standards discussed and described in the proposed sewer rules and regulations. Finally, he discussed some of key future needs and plans to accommodate the anticipated growth from the INland Port development initiative.

B. OUCC's Case-in-Chief. Richard Corey reviewed and assessed the accuracy of the calculations and reasonableness of the tariff modifications of (1) Kingsbury's excessive strength surcharges; (2) the modification of its water utility's fire protection charges; and (3) the system development charges and other non-recurring charges for both water and wastewater service. Mr. Corey also analyzed Petitioner's proposed rules and regulations for both water and sewer, including detailed annotations. He noted that the majority of the annotations referenced or related back to the Indiana Administrative Code and identical or similar relevant language in Kingsbury's proposed rules. The remaining annotations identified and explained any deviations developed by the company that were more tailored to the unique circumstances and service requirements of this utility. Mr. Corey's ultimate conclusion and recommendation was that he did not have any issues with the rules as proposed and recommended that they be approved by the Commission. Likewise he recommended that the Commission approve Petitioner's proposed Excessive Strength Surcharges, subject to the conditions described by OUCC Witness Larry McIntosh; the proposed System Development Surcharges subject to verification by the OUCC during the Phase II; as well as Petitioner's proposed Customer Meter Deposit, Bad Check Charges, Service Charges, and Reconnect and Disconnect Charges. Finally, Mr. Corey supported Commission approval of Petitioner's proposed modifications to its Hydrant Charge and Fire Protection/Sprinkler System Charges.

Larry McIntosh testified regarding Kingsbury's proposed excessive strength surcharge. Mr. McIntosh recommends the excessive strength surcharge be approved, but that the fees or charges also be applied to waste haulers. He suggested landfill leachate be randomly sampled to determine the excessive strength surcharge and that landfill leachate be sampled at least semi-annually, but no mechanism was proposed. Mr. McIntosh provided his opinion on Petitioner's proposed water and wastewater service rules and reviewed the modification of Kingsbury's fire protection charges. Mr. McIntosh recommended that Petitioner's proposed rules and regulations be approved; its Monthly Fire Hydrant Charges be approved at \$8.16 per equivalent connection; and that the Kingsbury annual sprinkler connection charges be approved with the yearly amount billed to customers in monthly installments.

6. Discussion and Findings. 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 (Ind. 2000). When the Commission approves a settlement, that settlement “loses its status as a strictly private contract and takes on a public interest gloss.” *Id.* (quoting *Citizens Action Coalition v. PSI Energy*, 664 N.E.2d 401 (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, Inc.*, 735 N.E.2d at 795. The Commission’s own procedural rules require that settlements be supported by probative evidence. 170 IAC 1-1.1-17(D). Therefore, before the Commission can approve the Settlement, we must determine whether the evidence in this Cause sufficiently supports the conclusions that the Settlement is reasonable, just, and consistent with the purpose of Ind. Code ch. 8-1-2, and that such Settlement serves the public interest.

Based on the evidence presented in this Cause, the Commission finds the Settlement Agreement represents a reasonable resolution to most of the issues presented in the Phase I portion of this matter. Thus, we find that Kingsbury should be authorized to: (1) establish excessive strength surcharges for commercial and industrial wastewater service; (2) establish system development charges for both water and wastewater services; (3) increase or add the limited, identified non-recurring charges noted in Petitioner’s Phase I filing for water and wastewater service; and (4) modify Petitioner’s existing fire protection charges. However, we decline to approve Petitioner’s proposed rules and regulations. Petitioner requested that the Commission approve the use of the water and wastewater rules and regulations as described in Petitioner’s Exhibit Nos. JJ-1 and JJ-2. Further, in the Settlement Agreement, the Parties agreed that Petitioner’s proposed rules and regulations should be approved. At the technical conference held on the date of evidentiary hearing in this Cause, representatives of the Commission’s CAD discussed the proposed rules and regulations with the Parties. As a result of those discussions, Petitioner submitted Petitioner’s Late Filed Exhibits JJ-1a and JJ-2a.

The Commission’s rules along with Petitioner’s rules govern the relationship between Petitioner and its customers. If there is a conflict between the two sets of rules, the Commission’s rules control. However, the language proposed by Petitioner in Rules 68 and 83 of Petitioner’s Late Filed Exhibits JJ-1a and JJ-2a, could have the effect of overriding the Commission’s rules. Further, Petitioner failed to offer any evidence or support for the reason the utility’s rules and regulations should not be consistent with the Commission’s rules. Therefore, Petitioner’s water and sewer rules and regulations are not approved as part of this proceeding. Should Petitioner decide to modify its rules and regulations, it shall submit those modifications to the Commission’s water and wastewater division staff for its consideration and approval pursuant to the 30-day filing procedure as described in 170 IAC 1-6.¹

The Parties agree that the Settlement Agreement should not be used as precedent in any other proceeding or for any other purpose, except to the extent necessary to implement or enforce its terms. Consequently, with regard to future citation of the Settlement Agreement, we find that our approval

¹ 170 IAC 1-6-4 prohibits filings addressing rules and regulations that would violate the Commission’s rules and regulations.

herein should be construed in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434, 1997 Ind. PUC LEXIS 459, at *19-22 (IURC March 19, 1997).

7. **Phase II.** The Parties shall submit an agreed procedural schedule for Phase II of this proceeding on or before October 11, 2013.

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

1. The Phase I Settlement Agreement is hereby approved subject to the modifications herein.

2. Petitioner is hereby authorized to implement the excessive strength surcharges for wastewater service; establish system development charges for both water and wastewater services; increase and add those limited, identified non-recurring charges water and wastewater service; and modify Petitioner's existing fire protection charges.

3. Petitioner's proposed changes to its rules and regulations applicable to water and sewer services are hereby denied.

4. Prior to placing into effect the rates and charges approved above, Petitioner shall file new schedules of rates and charges with the Water/Wastewater Division of the Commission consistent with the findings set forth above. Such rates and charges for water and wastewater service will become effective upon approval by the Water/Wastewater Division of the Commission.

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

ATTERHOLT, BENNETT, LANDIS, MAYS AND ZIEGNER CONCUR:

APPROVED: SEP 11 2013

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



Brenda A. Howe
Secretary to the Commission

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF)
 KINGSBURY UTILITY CORPORATION, A)
 FOR-PROFIT WATER AND WASTEWATER)
 INDIANA CORPORATION FOR)
 AUTHORITY TO ESTABLISH CERTAIN)
 NON-RECURRING CHARGES; SYSTEM)
 DEVELOPMENT CHARGES; TO ISSUE)
 LONG-TERM DEBT; APROVAL OF NEW)
 RULES AND REGULATIONS; AND FOR)
 APPROVAL OF A CHANGE IN RATES AND)
 CHARGES THROUGH A TWO-PHASE)
 PROCEEDING.)

CAUSE NO. 44327

**STIPULATION AND SETTLEMENT AGREEMENT
 (Phase 1)**

Petitioner, Kingsbury Utility Corporation ("KUC" or "Petitioner"), and the Office of Utility Consumer Counselor (the "OUCC"), being all of the parties to this proceeding (collectively the "Parties"), stipulate and agree for the purposes of resolving the issues in this Phase 1 portion of this Cause to the terms and conditions set forth below (which terms and conditions and any exhibits attached thereto are collectively referred to herein as the "Settlement"). Generally, the Parties stipulate and agree that as part of a resolution of Phase 1, the following rate and other relief should be granted by the Commission: (1) establishment of excessive strength surcharges for commercial and industrial wastewater service; (2) the establishment of system development charges for both water and wastewater services; (3) an increase and addition of the limited, identified non-recurring charges noted in Petitioner's Phase 1 filing for water and wastewater service; (4) a modification of Petitioner's existing fire protection charges; and (5) the authority to implement rules and regulations for both water and

wastewater service, as more specifically discussed below. In the subsequent second phase of this case (Phase 2), Petitioner will file for and support a modification of certain of its remaining rate structures for water and wastewater service not otherwise addressed in Phase 1 to better reflect the actual and anticipated cost of providing such services.

More specifically the Parties stipulate and agree as follows:

1. The Parties stipulate and agree to the issuance by the Commission of a final order for Phase 1 of this proceeding in the form to be prepared and agreed upon by the parties and filed with the Commission on or before the date of the July 11, 2013 evidentiary hearing (the "Proposed Order").

2. Rules and Regulations. The Parties stipulate and agree that Petitioner's proposed Rules and Regulations for both the water and wastewater utility operations as submitted and prefiled by Petitioner on March 27, 2013 as Petitioner's Exhibits JJ-1 and JJ-2 respectively, are reasonable and just and therefore should be approved.

3. System Development Charges. The Parties agree that water and wastewater system development charges in the amount of \$565 per equivalent connection for water, and \$2,500 per equivalent connection for wastewater service, as proposed and further detailed in the calculations of Petitioner's Witness Scott Miller in Petitioner's prefiled Exhibit SAM-1, are reasonable and just and should be approved.

4. Excessive Strength Surcharges. The Parties stipulate and agree that Petitioner's proposed excessive strength surcharges for commercial and industrial users as proposed and supported by Petitioner in both prefiled Exhibit SAM and Exhibit JJ, are reasonable and just and should be approved. The Parties further stipulate and agree that the issue of whether and how this excessive strength surcharge should be applied to waste haulers offloading septage and leachate into KUC's sewer treatment facilities shall be presented and addressed by the Parties in

Phase 2 of these proceedings. As part of its case in Phase 2, Petitioner shall propose a mechanism for applying an excessive strength charged to hauled waste or provide support for not including such a mechanism.

5. Non-Recurring and Fire Protection Charges. The Parties stipulate and agree that each of the following non-recurring or limited rate requests submitted and supported by both Petitioner and the OUCC in their respective Phase 1 prefiled cases should be approved as requested:

- (a) Customer Meter Deposit (Water Only);
- (b) Bad Check Charge (Water and Wastewater);
- (c) Service Charge (Water and Wastewater);
- (d) Reconnect and Disconnect Charge (Water and Wastewater); and
- (e) Fire Protection charges, including:
 - (1) monthly fire hydrant charge; and
 - (2) annual sprinkler connection charges.

The Parties further agree that Petitioner may institute a minimum inspection fee of \$50 in connection with its review of new customer connections.

6. Phase 2 – Rates, Charges and Financing. As noted in its Verified Petition and as requested by the presiding officers in this matter, KUC shall work with the OUCC and timely notify the Commission of its need and intent to pursue the second phase of these proceedings which will include Petitioner's case to support and establish new base rates and charges as well as requesting any necessary financing authority. The Petitioner shall at that time also give timely notice to its customers of the intent to propose these new rates and charges as will be specifically set forth in subsequent filings. It is the intent of the Parties that the rates and charges agreed to

and herein identified would, unless otherwise specifically identified by Petitioner as part of its Phase 2 filing in these proceeding, be finally established once reviewed and approved by the Commission as part of its review of this Stipulation and Settlement Agreement.

7. Use of the Settlement. The Parties shall support this Settlement before the Commission and request that the Commission expeditiously accept and approve the Settlement. The Parties specifically intend and request that the balance of the procedural schedule, including the OUCC need to respond to Petitioner's First Set of Data Requests submitted to the OUCC on June 18, 2013, be suspended. Moreover, the concurrence of the Parties with the terms of the Settlement is expressly predicated upon the Commission's approval of the Settlement without amendment. If the Commission modifies, alters or proposes any changes to the Settlement in any material way or imposes additional obligations on Petitioner not otherwise contemplated herein, this Stipulation and Settlement Agreement shall be deemed withdrawn unless these modifications are unanimously consented to by the Parties in writing. If the Settlement is not approved by the Commission without amendment, the Parties agree that the terms thereof shall not be admissible in evidence or in any way discussed in any proceeding and they will jointly request the Commission to re-establish a reasonable schedule to conclude Phase 1 of this docket. The Parties expressly reserve all of their rights, including the right to present additional appropriate evidence, if necessary. The Parties further agree that due to OUCC's acceptance of Petitioner's Phase 1 requests and proposals the testimony and evidence already prefiled by the Parties sufficiently supports this Stipulation and Settlement Agreement.

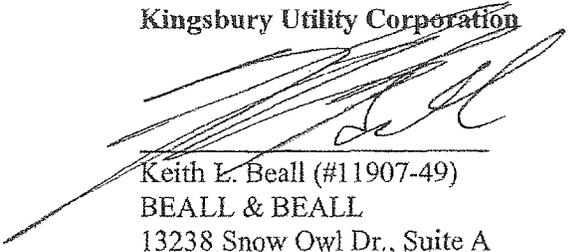
8. Evidence in Support of Settlement. The Parties agree that the testimony and evidence supporting this Settlement constitutes substantial evidence sufficient to support this Settlement and provides an adequate evidentiary basis upon which the Commission can make any findings of fact or conclusions of law necessary for the approval of this Settlement, as filed. Accordingly,

the Parties agree that the testimony and evidence prefiled to-date shall be offered into evidence without objection and the Parties hereby waive cross-examination. The Parties shall prepare and file an agreed proposed order with the Commission as soon as reasonably possible, and if approved, Petitioner shall promptly file tariffs that comply with the details of this Settlement.

9. The undersigned have represented and agreed that they are fully authorized to execute this Stipulation and Settlement Agreement on behalf of their designated clients who will be bound hereby.

Respectfully submitted,

Kingsbury Utility Corporation



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