ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF INDIANA-AMERICAN WATER COMPANY, INC. FOR (1) AUTHORITY TO INCREASE ITS RATES AND CHARGES FOR WATER AND SEWER UTILITY SERVICE, (2) APPROVAL OF NEW SCHEDULES OF RATES AND CHARGES APPLICABLE THERETO, (3) AUTHORITY TO ESTABLISH AND IMPLEMENT SYSTEM DEVELOPMENT CHARGES, (4) AUTHORITY TO ESTABLISH AND IMPLEMENT CERTAIN CONNECTION FEES AND POLICIES AND NEW RULES AND REGULATIONS APPLICABLE THERETO, AND (5) AUTHORITY TO IMPLEMENT A REVENUE STABILITY MECHANISM	)	**CAUSE NO. 44450** **APPROVED:** MAR 19 2014

PREHEARING CONFERENCE ORDER OF THE COMMISSION

Presiding Officers:
Carolene Mays, Commissioner
Carol A. Stephan, Commissioner
Jeffery A. Earl, Administrative Law Judge

On January 24, 2014, Petitioner, Indiana-American Water Company, Inc. (Petitioner or Indiana-American) filed its petition in this Cause.

As provided for in 170 IAC 1-1.1-15, the Commission held a Prehearing Conference at 1:00 p.m. on February 20, 2014, in Hearing Room 222, 101 West Washington Street, Indianapolis, Indiana. Notice of the Prehearing Conference was given and published as required by law. Proofs of publication of the notice have been incorporated into the record and placed in the official files of the Commission. Petitioner, the Indiana Office of Utility Consumer Counselor ("OUCC"), Town of Schererville, and the City of Crown Point appeared and participated at the Prehearing Conference. No members of the general public appeared or sought to participate.

Prior to the opening of the record and with the consent of all parties in attendance, an informal discussion was held regarding procedural and scheduling matters in this Cause. The agreement of the parties was then read into the record.

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

1. **Test Period**. Petitioner proposed a forward-looking test period using projected data as authorized by Ind. Code § 8-1-2-42.7(d)(1). The test year for determining Petitioner's projected operating revenues, expenses, and operating income shall be the 12-month period ending November 30, 2015. The historical base period shall be the 12-month period ending September 30, 2013.

2. **Rate Base Cutoff**. Petitioner proposed the use of a 13-month average of rate base for its future test year rate base. On February 18, 2014, the OUCC filed a Motion to Strike Petitioner's Proposed Rate Base Cutoff (Rate Base Motion). On February 28, 2014, Petitioner filed its response to the Rate Base Motion. The OUCC filed its Reply on March 7, 2014. Also on March 7, Crown Point, who joined the Rate Base Motion during the Prehearing Conference, filed its Reply. Our discussion on rate base cutoff below addresses the issues raised in the Rate Base Motion. Therefore, the Rate Base Motion is denied as moot.

The OUCC argues that Petitioner's proposal to utilize a forward-looking rate base cutoff date violates the requirement of Ind. Code § 8-1-2-6 (Section 6) that valuation of a utility's property must be based on plant that is actually used and useful and construction costs that were actually incurred and paid as part of the construction of the utility. The OUCC notes that while Ind. Code § 8-1-2-42.7 (section 42.7) authorizes use of a forward-looking test period, it does not specifically authorize the use of a projected rate base and, therefore, section 42.7 did not modify or repeal the requirements of section 6.

In interpreting a statute, we presume the legislature intended logical application of the language used in the statute, so as to avoid unjust or absurd results. *Citizens Action Coalition of Ind., Inc. v. PSI Energy, Inc.*, 894 N.E.2d 1055, 1063 (Ind. Ct. App. 2008). If two statutes conflict, our first task is to attempt to harmonize the conflicting statutes. *Id.* "So long as two statutes can be read in harmony with one another, we presume that the legislature intended for them both to have effect." *Id.* (quoting *State v. Universal Outdoor, Inc.*, 880 N.E.2d 1188, 1191 (Ind. 2008)).

Section 42.7 does not explicitly authorize or prohibit the use of a projected rate base; rather, it authorizes the use of a forward-looking test year using projected data. Effective rate making requires that the data used provide an accurate picture of a utility's operations during the period in which the proposed rates will be in effect. *L.S. Ayres & Co. v. IPALCO*, 351 N.E.2d 814, 828 (Ind. Ct. App. 1976). By freezing, for a historic test period, or predicting, for a forward-looking test period, a utility's operations in a convenient time frame, we can observe the inherent interrelationships among rate base, expenses, and revenues. *See Id.* "This observation is crucial to the concept of the test period because a complete picture of these dynamic interrelationships can only be obtained when the rate base, expense, and revenue components are examined in phase." *Id.*

In light of this, it is appropriate to correlate a forward-looking test period with a projected rate base, especially when a utility plans to complete a major capital project during the test period. In Indiana-American's petition it identifies one major project, the Muncie Plant Improvements, that it anticipates completing and placing in service by November 2014. Therefore, we conclude that use of a projected rate base is appropriate in this case.

However, we cannot ignore the requirement of section 6 that utility property included in rate base must be actually used and useful. The phrase used and useful means that the plant must be actually devoted to providing utility service and that the plant's utilization must be reasonably necessary to the provision of utility service. *Citizens Action Coalition of Ind., Inc.*, 894 N.E.2d at 1064. Nothing in section 42.7 can be read to explicitly or implicitly alter this fundamental understanding of the used and useful standard. Petitioner's proposed 13-month average rate base would allow Petitioner to begin recovering a return on investment for utility plant that is not yet in service, i.e., not actually used and useful. Therefore, while we approve the use of a projected rate base, we do not approve Petitioner's proposed 13-month average rate base.

In light of our discussion above, we conclude that the rate base for this Cause shall be the actual and projected used and useful property as of November 30, 2015. Because Petitioner's rates will be based on a projected rate base that is not yet in service, we must devise some mechanism to phase in rates at one or more intervals during the test period to account for completed projects up to that interval. The exact nature of such a mechanism will be addressed in the final order in this Cause after we have had an opportunity to review the parties' respective evidence on this issue. Petitioner may file supplemental evidence on this issue within 30 days of the effective date of this Prehearing Conference Order.

3. **Notice to Customers**. Petitioner shall provide evidence of its compliance with 170 IAC 4-1-18(C) to provide notice to its customers 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. **Petitioner's Prefiling Date**. Petitioner prefiled its case-in-chief on January 24, 2014. Petitioner prefiled revisions to its case-in-chief on January 31, 2014, and February 7, 2014. Petitioner may prefile supplemental evidence on the issue of the projected rate base within 30 days of the effective date of this Prehearing Conference Order.

5. **Field Hearing**. The Commission will hold two field hearings in this Cause:

- The first will take place at 6:00 p.m. EST on April 8, 2014, in the Performing Arts Center of Franklin Community High School, 2600 Cumberland Dr., Franklin, Indiana.
- The second will take place at 6:00 p.m. CST on April 10, 2014, in the Gary Common Council Chambers, 401 Broadway, Gary, Indiana.

6. **OUCC's and Intervenors' Prefiling Date**. The OUCC and all Intervenors shall prefile the testimony and exhibits constituting their respective cases-in-chief on or before May 2, 2014. Copies of same shall be served upon all parties of record.

7. **Petitioner's Rebuttal Prefiling**. Petitioner shall prefile its rebuttal testimony and exhibits on or before May 28, 2014. Copies of same shall be served upon all parties of record.

8. **Witness Order**. Parties shall submit their intended order of witnesses to the Commission and the parties in writing at least 72 hours in advance of the evidentiary hearing.

9. **Evidentiary Hearing on the Parties' Cases-In-Chief**. The Evidentiary Hearing in this Cause will commence at 9:30 a.m. on June 23, 2014, in Hearing Room 222, 101 West Washington Street, Indianapolis, Indiana, and will continue as necessary on June 24, 25, 26, 27, and 30 and July 7, 8, 9. At such time, the direct evidence of the respective parties shall be presented and their respective witnesses examined. Thereafter, Petitioner shall present its prefiled rebuttal evidence as well as any additional evidence rebutting evidence adduced on cross-examination of the OUCC's or Intervenors' witnesses. If the parties reach settlement, the agreement and supporting testimony and exhibits shall be submitted to the Commission five (5) business days prior to the Evidentiary Hearing.

10. **Discovery**. Discovery is available for all parties and shall be conducted on an informal basis. Any response or objection to a discovery request shall be made within ten (10) calendar days of the receipt of such request until February 28, 2014. Thereafter, any response or objection to a discovery request shall be made within seven (7) calendar days of the receipt of such request. Any discovery communication received after noon on a Friday or after 3:00 p.m. on any other business day shall be deemed to have been received on the following business day. The parties have agreed to conduct discovery through electronic means.

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

12. **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.

13. **Objections to Prefiled Testimony and Exhibits**. Any objections to the admissibility of prefiled testimony or exhibits shall be filed with the Commission and served on all parties of record as soon as possible after the testimony or exhibit is prefiled but not less than seven (7) business days prior to the date scheduled for commencement of the hearing at which the testimony or exhibit will be offered into the record.

14. **Intervenors**. Any party permitted to become an Intervenor in this Cause shall be bound by the record as it stands at the time its Petition to Intervene is granted, pursuant to 170 IAC 1-1.1-11.

15. **Subdocket.** On February 18, 2014, the OUCC filed a Motion to Strike Petitioner's Revenue Stability Mechanism (RSM Motion). On February 28, 2014, Petitioner filed its Response to the RSM Motion. The OUCC filed its Reply on March 7, 2014. Our discussion of the creation of a subdocket in this Cause below addresses the issues raised in the RSM Motion. Therefore, the RSM Motion is denied as moot.

Section 42.7 effectively creates a 300-day deadline for the completion of a proceeding "to change basic rates and charges" of a utility. Indiana American's Petition and case-in-chief evidence in this Cause includes requests for approval of several items that are extraneous to its basic rates and charges, including the revenue stability mechanism, a request to reconsider a prior Commission decision to deny a fair value increment related to the acquisition of United Water, proposed system development charges, connection fees, policies, and proposed rule changes.

The time constraint imposed by section 42.7 limits our ability to adequately consider and address the complex issues involved in a request for changes to basic rates and charges. The language of section 42.7 limits the application of the 300-day deadline to consideration of changes to basic rates and charges, and does not require us to consider extraneous issues within that timeframe. Therefore, we order the creation of a subdocket, in which we will consider Petitioner's requests for the following relief:

- The proposed system development charges, connection fees, and policies discussed in Paragraph 9 of Indiana American's Petition.
- The proposed revenue stability mechanism discussed in Paragraph 11 of Indiana American's Petition.
- The reconsideration of our denial of a fair value increment discussed on pages 44-48 of the Direct Testimony of Gregory P. Roach.

Petitioner shall file a new Petition for the appropriate relief under Cause No. 44450 S1, including a caption reflecting the specific issues to be addressed in the subdocket. In lieu of prefiling

direct evidence in the subdocket, Petitioner may file a request for administrative notice of the pertinent testimony and exhibits that have already been prefiled in this Cause.

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.

ATTERHOLT, MAYS, STEPHAN, AND ZIEGNER CONCUR; WEBER NOT PARTICIPATING:

APPROVED: MAR 19 2014

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