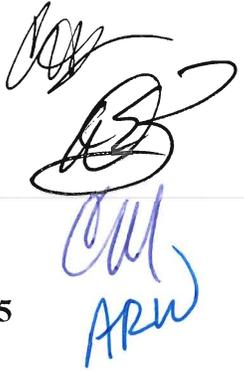


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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF OLD STATE UTILITY)
CORPORATION, BY ITS RECEIVER, FOR THE) CAUSE NO. 44485
SALE AND TRANSFER OF ITS SEWER ASSETS TO)
THE CITY OF EVANSVILLE AND THE)
EVANSVILLE WATER AND SEWER UTILITY) APPROVED:
DEPARTMENT)

JUL 23 2014

ORDER OF THE COMMISSION

Presiding Officers:
Angela Rapp Weber, Commissioner
David E. Veleta, Administrative Law Judge

On April 24, 2014, the Old State Utility Corporation, by its receiver (“Petitioner” or “OSUC”), filed its Petition with the Indiana Utility Regulatory Commission (“Commission”) seeking approval of the sale and transfer of its sewer assets to the City of Evansville, Indiana, by and through its Evansville Water and Sewer Utility Department (“Evansville” or “EWSU”). On April 28, 2014, Petitioner prefiled the testimony of Todd Carpenter and exhibits constituting its case-in-chief with the Commission. EWSU sought permission to intervene, which was granted, and prefiled the testimony of Allen R. Mounts on May 14, 2014. On May 14, 2014, the Indiana Office of Utility Consumer Counselor (“OUCC”) filed the testimony of Scott A. Bell. On May 20, 2014, the Commission issued a docket entry posing certain questions to EWSU. A response was filed by EWSU on May 22, 2014.

An evidentiary hearing in this Cause was held at 10:00 a.m. on May 28, 2014, in Room 224, PNC Center, 101 W. Washington Street, Indianapolis, Indiana. Petitioner, EWSU, and the OUCC attended the evidentiary hearing. No members of the general public attended this hearing or otherwise sought to testify.

Based upon the applicable law and evidence, the Commission now finds:

1. Notice and Jurisdiction. Notice of the hearing conducted in this Cause was given and published as required by law. OSUC is a public utility within the meaning of that term in Indiana Code § 8-1-2-1 and is subject to the jurisdiction of the Commission in the manner and to the extent provided by law. Evansville is a municipality located in Vanderburgh County, Indiana. EWSU operates municipal sewer and water systems inside and outside of Evansville’s municipal boundaries. EWSU’s sewer utility is not subject to Commission jurisdiction. *See Cities & Towns of Anderson v. Public Serv. Comm’n*, 397 N.E.2d 303, 310 (Ind. Ct. App. 1979).

EWSU is interconnected with OSUC and its current service area is adjacent to that of OSUC. EWSU proposes to acquire the sewer utility assets of OSUC. Pursuant to Indiana Code § 8-1-2-89(j), this Commission has jurisdiction over the subject matter of this proceeding.

2. **Petitioner's Characteristics.** OSUC operates a rural sewage disposal service in the Shady Hills subdivision in rural Vanderburgh County. OSUC is empowered by Certificate of Territorial Authority ("CTA") Orders No. 58 and 85A of the Commission for the purpose of providing rural sewage disposal service to customers within its service area. OSUC serves approximately 138 residential and two commercial customers. Its system is comprised of 57 manholes and 14,450 feet of pipe.

3. **Background.** Mr. Charles Beacham is the owner of OSUC. However, OSUC operates under receivership, pursuant to an Order of the Vanderburgh Superior Court, Cause No. 82D03-0710-CC-05218, *Old State Utility Corporation v. Evansville Water and Sewer Utility, et al.* ("the Vanderburgh case"). The April 28, 2009 Order issued in the Vanderburgh case appointed the receiver with the sole authority to expend funds and conduct all financial matters on behalf of OSUC. In the same entry, the Vanderburgh Superior Court entered a judgment in favor of EWSU against OSUC for \$130,293, which represented the amount of unpaid sewage fees OSUC owed EWSU. The initial receiver has since been replaced by Todd Carpenter, who brought this action before the Commission as receiver of OSUC. According to the Petition filed in this Cause, Mr. Carpenter entered into an Asset Purchase Agreement ("APA") with EWSU for the sale of OSUC's assets. The APA was approved by the Vanderburgh Court on February 11, 2014, over the objection of Mr. Beacham.

OSUC's current rates and charges were set by the Commission in an Order issued in Cause No. 43627 on May 11, 2010. *Old State Utility Corporation*, Cause No. 43627, 2010 Ind. PUC LEXIS 159 (IURC May 11, 2010) (the "43627 Order").

4. **Relief Requested.** Petitioner requests that the Commission authorize the transfer and extinguishment of OSUC's CTA to EWSU. In addition, Petitioner requests that the Commission approve the transfer of OSUC's assets, including the transfer of its sewer customers, to EWSU in a manner consistent with the APA. Finally, Petitioner requests that the Commission terminate the review of OSUC in the 43627 Order.

5. **Evidence Presented.**

A. **Petitioner's Evidence.** Mr. Carpenter testified that OSUC's system has fallen into disrepair under its current ownership, and was further mismanaged prior to the receiver's appointment in 2009. Mr. Carpenter, a Certified Public Accountant with experience in managing small water and sewer utilities in Indiana, was directed by the Vanderburgh Court in the Vanderburgh case to explore options to provide stable ownership for OSUC. He solicited and received the informal encouragement and assistance of the staff of this Commission and the OUCC. After considering available options, Mr. Carpenter undertook negotiations with EWSU for the sale of the OSUC assets in a way that would be more likely to provide safe and reliable service for customers.

Mr. Carpenter testified further that, in July 2013, at the invitation of EWSU, OSUC counsel met and outlined a path by which EWSU might take over OSUC. That plan, as specifically addressed in the APA, involves the sale of OSUC assets to EWSU and the

incorporation of those customers into the EWSU system. The APA also provided additional relief for OSUC by the forgiveness of debts outstanding and owing to EWSU. EWSU and OSUC officials met with about 45 customers at a public meeting at Evansville Central High School in July 2013. At that two-hour session, officials fully outlined the plan and heard complaints and concerns of customers. At the end of the session, the Mr. Carpenter's counsel asked for a show of hands as to those in favor of an asset sale to EWSU. The affirmative response was unanimous.

Mr. Carpenter recommended, based on his experience as the receiver here and his work with similar small utilities, that the Commission approve the asset transfer as contemplated in the APA and Petition.

B. EWSU's Evidence. Allen R. Mounts, the director of EWSU, testified on behalf of the purchaser. Mr. Mounts discussed EWSU's position as the recipient of OSUC's collection system and the historical relationship between the two entities. He described the state of the OSUC system, based on the evaluation of his engineering staff, as deteriorating. No full evaluation of the system has been performed since 2006, which likely suggests that there are increased inflow and infiltration problems with the system. Mr. Mounts said that EWSU has the experience, financial capability, and willingness to address these problems.

Mr. Mounts indicated that EWSU previously received permission to charge extraterritorial rates 15% greater than those charged to its municipal customers. In response to an inquiry from the Presiding Officers, EWSU explained this approved rate. EWSU also anticipates a temporary surcharge to fund improvements on the OSUC system.

C. OUC's Evidence. Scott A. Bell, director of the OUC Water/Wastewater Division, testified on behalf of the OUC. Mr. Bell indicated that the OUC supports the transfer of assets from OSUC to EWSU as provided by the APA. He indicated that the receiver has adequately operated the utility, but that the acquisition by EWSU is the best long-term course for the customers of the utility. Mr. Bell provided a letter he sent to EWSU in 2013 suggesting this outcome. EWSU has the experience to operate OSUC. Mr. Bell suggested that OSUC's current CTA be revoked once the transfer is complete, and that the Commission investigation in Cause No. 43627 be terminated.

6. Commission Findings. Pursuant to Indiana Code § 8-1-2-89(j), to approve the transfer of sewer utility assets operated under a CTA to a municipality, the Commission must determine that (1) the assets lie within the given radius of miles from the corporate limits of the municipality in which the municipality is authorized to render sewage disposal services; (2) the municipality is prepared to render comparable sewage service without loss of continuity of service; and (3) the terms of the agreement for transfer of assets are reasonable.

We find that OSUC's sewer assets to be acquired by EWSU lie within the geographic area within which Evansville is authorized to render such service. Further, the evidence indicates and we find that EWSU has been providing and will continue to provide comparable sewer service without loss of continuity in service.

However, we have concerns with certain language included in the APA. Section 10 of the APA requires the Commission to approve “the sale or transfer to the Assets, the transfer of Seller’s sewer customers to Buyer, and the financing and surcharge related to the Improvements...” as a condition precedent to the Parties’ obligation to close the transaction. This language is problematic because the Parties have not requested the Commission approve the financing and surcharge related to the improvements to the OSUC. Additionally, there is no evidence to support the Commission making any findings on the need for financing or a surcharge. Furthermore, pursuant to Indiana Code § 8-1-2-89(j)(2), the Commission will lose all authority over the OSUC system once the transaction is consummated. Instead, after the close of the transaction, the authority to approve any financing or surcharge will rest entirely with Evansville.

OSUC has a long and troubled history, and this transaction may provide its customers with more reliable service in the future. Therefore, based on the evidence offered in this proceeding we find that the terms of the APA are reasonable, except for the above identified language. Thus, we approve the transfer of OSUC’s sewer assets pursuant to the APA, including to the extent necessary, the CTA. Upon transfer of OSUC’s sewer assets to EWSU, OSUC will no longer hold a CTA. Finally, we hereby close the review of OSUC ordered in the 43627 Order.

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

1. The acquisition by sale and transfer of Old State Utility Corporation’s sewer utility assets, pursuant to Indiana Code § 8-1-2-89, by the City of Evansville through its Evansville Water and Sewer Utility in accordance with the APA shall be and hereby is approved.
2. We hereby close the review of OSUC ordered in the 43627 Order.
3. This Order shall be effective on and after the date of its approval.

STEPHAN, MAYS, WEBER, AND ZIEGNER CONCUR:

APPROVED: JUL 23 2014

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



Brenda A. Howe
Secretary to the Commission