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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE INDIANA UTILITY )  
REGULATORY COMMISSION'S INVESTIGATION )  
INTO THE OPERATION OF PHILADELPHIA ) CAUSE NO. 44488  
WATER WORKS, L.L.C. AND WHETHER ITS )  
CERTIFICATE OF TERRITORIAL AUTHORITY )  
AND CERTIFICATE OF PUBLIC CONVENIENCE ) APPROVED:  
AND NECESSITY FOR WASTEWATER AND )  
WATER SERVICE SHOULD BE REVOKED )

MAR 18 2015

ORDER OF THE COMMISSION

**Presiding Officers:**

**Carol A. Stephan, Commission Chair**  
**David E. Veleta, Administrative Law Judge**

On May 21, 2014, the Indiana Utility Regulatory Commission ("Commission") initiated this investigation into the operation of Philadelphia Waterworks, L.L.C. ("PWW") and its ability to render water and wastewater utility service in a rural area of Hancock County, Indiana.

A public evidentiary hearing was conducted in this matter on January 20, 2015 at 9:30 a.m., in Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. PWW and the Indiana Office of Utility Consumer Counselor ("OUCC") appeared and participated at the hearing. No members of the general public appeared. The parties offered their evidence into the record which was admitted without objection.

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

**1. Statutory Notice and Commission Jurisdiction.** Notice of the public hearing conducted by the Commission in this Cause was given and published by the Commission as required by law.

PWW is a "public utility" as defined in Indiana Code § 8-1-2-1. Pursuant to Indiana Code § 8-1-2-58, investigations into any matter relating to a public utility may be made, with or without notice. If the Commission becomes satisfied that sufficient grounds exist to warrant a hearing pertinent to the matters investigated, Indiana Code § 8-1-2-59 requires that the public utility involved be furnished a statement notifying it of the matters under investigation. Accordingly, the Commission has jurisdiction over PWW and the subject matter of this investigation.

**2. Background.** On February 7, 2007, in Cause No. 43063, the Commission issued PWW a certificate of territorial authority ("CTA") and a certificate of public convenience and

necessity (“CPCN”) to own and operate wastewater and water facilities in a rural area of Hancock County, Indiana (“43063 Order”). The 43063 Order approved a settlement agreement between the OUCC and PWW.

In accordance with the 43063 Order, PWW filed on March 16, 2009 the plans and specifications for the wastewater and water facilities, the Indiana Department of Environmental Management (“IDEM”) construction permit for those facilities, and the IDEM-approved water system management plan. However, as of May 21, 2014, PWW had (1) not filed a copy of its National Pollutant Discharge Elimination System (“NPDES”) permit, (2) not filed an annual public utility report in accordance with Indiana Code § 8-1-2-16, and (3) not responded to recent Commission requests for information as contemplated by Indiana Code § 8-1-2-52. On May 21, 2014, the Commission commenced this investigation into PWW’s CTA and CPCN.

**3. Parties’ Filings and Testimony.** Philip D. Going testified on behalf of PWW. Mr. Going is the managing member and primary investor in PWW. Mr. Going indicated that he had not received the communications from the Commission. Mr. Going suspected he needed to update the PWW’s mailing address, and he testified that he has now so updated that address with the Commission and will respond to future inquiries.

Mr. Going testified that prior to the commencement of this investigation, PWW completed its plans and specifications for the proposed water and wastewater facilities, filed those plans and specifications with the Commission, and also filed its IDEM construction permit for those facilities with the Commission. PWW also obtained an approved water system management plan from IDEM and filed that approved-plan with the Commission.

Mr. Going also indicated that PWW does not currently serve any customers. In 2008, the economic downturn caused development in Hancock County, including the certificated area, to slow. Although the housing market has begun to turn around, there has been no development in the certificated area to date. Nonetheless, Mr. Going is cautiously optimistic that development will commence in the near future. Under cross-examination, Mr. Going indicated that his optimism is related to his profession as a surveyor in Hancock County. In that position, Mr. Going has seen an increased request for surveys for developments and anticipates that activity will increase and include the certificated area. Without any customers, Mr. Going indicated that the construction that had taken place was the acquisition of a main lift station tank, a manhole, the drilling and capping of the water production well, and improvements to its driveway access to the utility facility property. Because PWW has not connected customers, it has not begun construction of its wastewater treatment plant or water treatment facilities. Accordingly, PWW has not yet obtained an NPDES permit.

Based on the fact that PWW has not served any customers and has had little financial activity, Mr. Going indicated that he assumed the Commission would not want the annual report. Having corrected that understanding, PWW filed its first annual report on November 12, 2014.

Harold L. Rees testified on behalf of the OUCC. Mr. Rees is a Senior Utility Analyst for the Water/Wastewater Division of the OUCC. Mr. Rees testified that PWW's CTA and CPCN should not be revoked. Nonetheless, Mr. Rees recommended that PWW initiate a proceeding by the end of 2016 establishing "that it continues to have the requisite technical, managerial and financial ability and capacity to provide wastewater [and water] service." Mr. Rees based this suggestion on his opinion that the CTA and CPCN should not be given for an indefinite period of time without some assurance of development in the area.

In his rebuttal testimony, Mr. Going indicated that PWW would file the personal five year guarantee as a compliance filing in Cause No. 43063 after connecting its first customer. Mr. Going also indicated that any requirement of filing a new cause was, in his estimation, outside of the scope of these proceedings which were focused on the three issues related to communication and compliance filings. Mr. Going expressed concern about the scope of such a filing in the limited two-year timeline suggested by Mr. Rees. Mr. Going agreed with Mr. Rees that the CTA and CPCN should not be revoked.

**4. Commission Discussion and Findings.** Indiana Code § 8-1-2-89(k) provides "[a]ny [CTA] may, after notice of hearing and hearing, be revoked by the commission, in whole or in part, for the failure of the holder thereof to furnish reasonably adequate sewage disposal service within the area...." We initiated this investigation into PWW's operation and provision of water and wastewater services to determine whether its CTA and CPCN should be revoked. In 2007, we granted PWW a CTA for sewage disposal service and CPCN for water service. In 2009, PWW filed its plans and specifications for the water and wastewater facilities, the IDEM construction permit for those facilities and the IDEM-approved water system management plan. However, PWW has never constructed its proposed water and wastewater treatment facilities, has not received an NPDES permit, and does not provide water or wastewater service to any customers. Mr. Going explained that PWW has not constructed a wastewater treatment plant or water treatment facility because Hancock County has experienced a significant decrease in development since 2008.

Before we may grant a CTA, we must find the applicant has proved "public convenience and necessity require the rendering of the proposed service in the proposed rural area by this particular sewage disposal company." Indiana Code § 8-1-2-89(e)(3). Notwithstanding Mr. Going's optimistic expectations, there is no evidence development in the territory is going to happen soon. An inactive public wastewater utility should not expect to hold on to an exclusive territory for an indefinite period. Therefore, the Commission finds that PWW has failed to demonstrate that it is furnishing reasonably adequate water and wastewater services within its approved service area, and PWW's CTA is hereby revoked. Furthermore, it is no longer in the public convenience and necessity for PWW to hold a CPCN. Thus, we hereby revoke PWW's CPCN.

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

1. Philadelphia Waterworks, L.L.C.'s CTA and CPCN to provide water and wastewater services within its approved service area in Hancock County, Indiana is revoked.
2. This Order shall be effective on and after the date of its approval.

**STEPHAN, MAYS-MEDLEY, HUSTON, WEBER, AND ZIEGNER CONCUR:**

**APPROVED:**      **MAR 18 2015**

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



**Brenda A. Howe**  
**Secretary to the Commission**