

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

**IN THE MATTER OF THE VERIFIED PETITION)
OF PRAIRIE UTILITIES, INC. 1) FOR AUTHORITY)
TO TRANSFER ITS SEWER UTILITY PLANT,)
WORKS AND SYSTEM TO THE CITY OF)
KOKOMO, INDIANA, 2) AFTER CONCLUSION OF)
THE TRANSFER, TO CANCEL ITS CTA TO)
PROVIDE SEWER SERVICE IN TIPTON COUNTY,)
INDIANA, 3) TO TERMINATE ITS PUBLIC)
UTILITY OBLIGATIONS, AND 4) TO CANCEL ITS)
SHAREHOLDER PERSONAL GUARANTEE)**

CAUSE NO. 44507

APPROVED:

DEC 30 2014

ORDER OF THE COMMISSION

Presiding Officers:

Carolene Mays-Medley, Vice-Chair

Jeffery A. Earl, Administrative Law Judge

On June 20, 2014, Prairie Utilities, Inc. ("Prairie") filed its Verified Petition in this Cause. On June 23, 2014, Prairie filed the testimony and exhibits of Thomas Astbury, President of Prairie, and Chris Cooper, Superintendent of the City of Kokomo ("Kokomo") Wastewater Treatment Plant.

On July 14, 2014, Tipton County filed a Petition to Intervene and Request for Stay, and on July 16, 2014, Kokomo filed a Petition to Intervene. The presiding officers granted both motions on July 30, 2014.

On August 22, 2014, Tipton County filed the direct testimony and exhibits of Joe VanBibber, Vice President of the Tipton County Board of Commissioners. On September 11, 2014, Tipton County filed Supplemental Direct Testimony and Exhibits from Mr. VanBibber.

On September 11, 2014, Kokomo filed additional direct testimony from Mr. Cooper.

On September 11, 2014, the Indiana Office of Utility Consumer Counselor ("OUCC") filed the direct testimony and exhibits of Harold Rees, Senior Utility Analyst in the OUCC's Water/Wastewater Division and Greg A. Foster, Utility Analyst II in the OUCC's Water/Wastewater Division.

On September 18, 2014, Prairie filed rebuttal testimony from Mr. Cooper.

On September 30, 2014, Tipton County filed a Motion to Submit Late Filed Exhibit, which included a signed copy of an interlocal agreement between Kokomo and Tipton County.

The Commission held an evidentiary hearing in this Cause at 9:30 a.m. on October 1, 2014, in Hearing Room 224, 101 West Washington Street, Indianapolis, Indiana. Prairie, Kokomo, Tipton County, and the OUCC appeared and participated in the hearing.

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

1. Notice and Commission Jurisdiction. Notice of the hearing in this Cause was given and published as required by law. Prairie is a “public utility” as defined in Ind. Code § 8-1-2-1(a)(3) and a “sewage disposal company” as defined in Ind. Code § 8-1-2-89(a)(1). Under Ind. Code § 8-1-2-89(j), the Commission has jurisdiction over the sale of a sewage disposal utility to a municipality when the utility lies within the radius of miles in which the municipality is authorized to provide sewage disposal service under Ind. Code § 36-9-23-36. Therefore, the Commission has jurisdiction over Prairie and the subject matter of this Cause.

2. Prairie’s Characteristics. Prairie was formed on January 3, 1977, to provide service to the Red Carpet Motel and the Prairie Acres subdivision located in a rural area of Tipton County near Sharpsville, Indiana. Prairie currently serves four (4) commercial and fifty-six (56) residential customers. Prairie holds a valid National Pollutant Discharge Elimination System (“NPDES”) Permit issued by the Indiana Department of Environmental Management (“IDEM”). The Commission issued Prairie a Certificate of Territorial Authority (“CTA”) to provide sewage disposal service within a rural area of Tipton County, Indiana and established rates for sewage disposal service in its March 14, 2013, Order in Cause No. 44158 (“44158 Order”).

3. Relief Requested. Prairie seeks Commission authority to: 1) sell and transfer its sewer system (“Prairie System”) to Kokomo; 2) after conclusion of the transfer to cancel its CTA to provide sewer service in Tipton County; 3) to terminate its public utility obligations; and, 4) to cancel the shareholder personal guarantee of Thomas Astbury given in Cause No. 44158.

4. Summary of the Evidence.

A. Prairie’s Evidence. Mr. Astbury generally described Prairie and his duties as Prairie’s President. In 1999, Prairie constructed a new 55,000 gallon per-day wastewater treatment plant at a cost of approximately \$300,000. The Prairie System consists of a lift station located at the treatment plant, several manholes, and clay tile to connect to customer properties. Prairie’s CTA area is approximately 1.5 miles from the municipal boundaries of Kokomo.

Mr. Astbury believes there is little likelihood of Prairie ever generating a fair return on the shareholders’ investment because its existing rates only cover operation costs and are not conducive to customer growth. Kokomo made a fair offer that will allow the Prairie’s shareholders to recover their investment. Kokomo has significant operational economies of scale in the area, meaning it will cost them less to operate Prairie’s infrastructure. Kokomo will pass these savings on to Prairie’s customers in the form of much lower sewer rates.

Mr. Astbury testified that Prairie's Commission-approved rate is a flat \$105.25 monthly charge for sewage disposal service. After the sale of the Prairie System to Kokomo, that rate would be reduced to \$45.01 per month. In addition, Kokomo has ample resources and expertise to ensure that Prairie's customers continue to receive high quality service.

Mr. Astbury explained the proposed transaction with Kokomo. Kokomo has agreed to purchase all of Prairie's utility assets for \$225,000 in cash. A copy of the Asset Purchase and Sale Agreement between Prairie and Kokomo is attached to Mr. Astbury's testimony. Mr. Astbury said that in the 44158 Order, the Commission found that net original cost of utility property was \$272,007, and the fair value of its utility property was not less than \$272,007, as of the end of 2011. Mr. Astbury believes that the proposed transaction is fair and reasonable. The transaction allows the shareholders to recoup their investment in Prairie. It also allows Prairie's existing customers to receive the same quality of service at much lower monthly rates.

Mr. Cooper said that Kokomo was approached by some of Prairie's customers when it increased its wastewater rates to determine if Kokomo could provide sewer service at a more reasonable rate. After a thorough analysis of the Prairie System and customer base, Kokomo decided to move forward with negotiations to purchase the Prairie System.

Mr. Cooper said that Kokomo has significant operational economies of scale, which allow it to operate Prairie's infrastructure at a lower cost. Kokomo has the financial ability to operate the Prairie System. He also stated that when Kokomo begins providing service to the Prairie System, the customers will receive continuous and uninterrupted service. Mr. Cooper testified that Prairie's existing service area is outside of Kokomo's corporate boundaries but within the radius of miles from Kokomo's boundaries in which it may provide sewer service.

Mr. Cooper explained pursuant to Kokomo City Code § 55.103(A)(1)(d), a single-family residential dwelling will be charged a minimum fee of \$45.01 per month and other facilities will be charged a minimum of \$50.90 per month.

B. Tipton County's Evidence. Mr. VanBibber testified that Tipton County initially intervened in this Cause because Prairie's service area is in Tipton County, but Kokomo is in Howard County. Therefore, Kokomo would not have the legal authority to serve Prairie's customers unless it entered into an interlocal agreement with Tipton County. Mr. VanBibber also raised several other concerns.

After Tipton County and Kokomo signed an interlocal agreement, Mr. VanBibber filed supplemental testimony, in which he said that Tipton County has withdrawn its objection to Kokomo's acquisition of Prairie because the interlocal agreement alleviates Tipton County's concerns. Under the terms of the interlocal agreement, Tipton County can purchase the Prairie System from Kokomo at any time. If Tipton County and Kokomo are unable to agree on a purchase price terms of the sale, they agree to submit the issue to the Commission for resolution. Tipton County requests that the Commission acknowledge now that it will, if necessary, accept the parties' request to determine the fair price or fair terms as a docketed proceeding.

Mr. VanBibber believes the interlocal agreement constitutes a fair and reasonable resolution of the issues between Tipton County and Kokomo. The customers of Prairie should see an immediate benefit in the form of lower monthly service rates. At the same time, neighboring property owners that are currently without service will be able to obtain service, if needed, on fair and reasonable terms. In short, Mr. VanBibber believes the interlocal agreement is a fair and reasonable resolution of the outstanding issues.

Tipton County offered the executed interlocal agreement, and the resolutions of the respective governing bodies of Kokomo and Tipton County approving the interlocal agreement as Intervenor Tipton County Exhibit 3.

C. OUCC's Evidence. Mr. Rees described seven historical operational issues experienced by Prairie and the steps taken by the current owners to resolve these issues. He recommended that Kokomo continue the current owners' efforts in addressing Prairie's inflow and infiltration issues.

Mr. Rees discussed the evidence demonstrating Kokomo's ability to operate the Prairie System. He said that Kokomo will be able to operate, maintain, and manage the Prairie System, meet service and environmental requirements, and provide wastewater service at a reasonable price to consumers. He also commented on some of the benefits of the proposed transfer and that Prairie's customers will immediately enjoy much lower sewer rates. In conclusion, Mr. Rees testified that the OUCC recommends the Commission approve the proposed transfer.

Mr. Foster testified that based on his investigation, Prairie will continue to collect the monthly charges due to them until the acquisition date. From that point on, Prairie's customers will be customers of Kokomo. Prairie has no customer deposits to refund. In response to OUCC data requests, Kokomo indicated it does not plan to assess any one-time or connection fees, or collect any deposits at this time.

In conclusion, Mr. Foster testified that the agreement entered into by Prairie and Kokomo appears to be reasonable. He stated the OUCC is supportive of the transfer of all sewer utility plant, works, and system to Kokomo.

5. Commission Discussion and Findings. Under Ind. Code § 8-1-2-89(j) states:

Upon approval by the [C]ommission given after notice of hearing and hearing, but not otherwise, any sewage treatment plant or plants, sewers, mains, stations, and equipment and appurtenances for the rendering of sewage disposal service , or any part thereof, may be sold, assigned, leased, or transferred by the holder thereof to any municipality if these assets . . . lie within the given radius of miles from the corporate limits of such municipality into which it is authorized to render such services, if such municipality is prepared to render a comparable sewage disposal service without loss of continuity of service, and if the terms of such sale, assignment, lease, or transfer are reasonable. However, once the [C]ommission has given its approval to such transaction and the transaction itself is actually consummated, the [C]ommission shall have no

control over the sewage disposal service henceforth rendered by such municipality as a municipally owned utility (as defined in this chapter).

A. Kokomo's authority to provide service. Under Ind. Code § 36-9-23-36, a municipality may provide sewage treatment service in areas within 10 miles outside its corporate boundaries. Mr. Astbury testified that Prairie's service area is approximately 1.5 miles outside of Kokomo's corporate boundaries. Therefore, we find that Prairie's service area and assets lie within the given radius of miles from Kokomo's corporate boundaries in which Kokomo is authorized to provide service.

However, Prairie's service area and assets are located in Tipton County. Under Ind. Code § 36-1-3-9(c)(2), if a statute authorizes a municipality to exercise a power outside its corporate boundaries but in a county other than the county in which the municipality is located, the municipality may exercise that power only if both the municipality and the other county, by ordinance, enter into an interlocal agreement under Ind. Code ch. 36-1-7. Mr. VanBibber sponsored Intervenor Tipton County Exh. 3, which includes copies of the following: Resolution No. 2661, A Resolution by the Fiscal Body of the City of Kokomo, Indiana, Approving an Interlocal Cooperation Agreement between and among Tipton County, Indiana and the City of Kokomo Concerning Sewer Service in Tipton County, passed by the Kokomo's Common Council; Resolution 2014-04, Resolution Approving Interlocal Agreement, passed by the Tipton County Commissioners; and the signed Interlocal Cooperation Agreement between and among Tipton County, Indiana and the City of Kokomo Concerning Sewer Service in Tipton County. Based on this evidence, we find that Kokomo has complied with the requirements of Ind. Code § 36-1-3-9(c)(2) and has authority to provide sewage disposal service in Prairie's service area in Tipton County.

B. Kokomo's ability to provide comparable, uninterrupted service. Mr. Cooper testified that Prairie's customers will receive continuous, uninterrupted service during the transfer of the utility to Kokomo. Mr. Cooper also testified that Kokomo currently serves over 50,000 customers, and he detailed his extensive education and training as a certified wastewater treatment plant operator. Both Mr. Astbury and Mr. Foster agreed that Kokomo could provide uninterrupted service to Prairie's customers. Based on this evidence, we find that Kokomo is prepared to render a comparable sewage disposal service without loss of continuity of service.

C. Reasonableness of terms of sale. Prairie offered a copy of the Asset Purchase and Sale Agreement as Attachment A to Petitioner's Exh. 1. Mr. Astbury testified that the proposed transaction allows Prairie's shareholders to recover their otherwise stranded investment while allowing Prairie's customers to receive the same quality of service at a much lower cost. The purchase of the Prairie System by Kokomo would reduce residential customer rates from \$105.25 to \$45.01. Mr. Cooper described Kokomo's long experience in operating its sewer system and its considerable financial resources. He described Kokomo's willingness and ability to provide quality service to Prairie's customers at a much lower cost. Both Mr. Rees and Mr. Foster reviewed the purchase agreement and recommended the agreement be approved.

In addition to the purchase agreement, Mr. VanBibber pointed out several benefits to customers of Kokomo's proposed service under the interlocal agreement. Tipton County has the

right to purchase the Prairie System at any time after providing notice to Kokomo, including a right of first refusal should Kokomo seek to sell the Prairie System to a third party. Kokomo agrees that it will not charge current or future customers in Tipton County more than the rate charged to similar customers within Kokomo's corporate boundaries and that it will make service available to new users on fair, reasonable, and nondiscriminatory terms.

Based on this evidence, we find that the terms of Prairie's sale of its sewage disposal system to Kokomo are reasonable.

In light of our discussion above, we conclude that Prairie and Kokomo have satisfied the requirements of Ind. Code § 8-1-2-89(j), and we approve the sale of the Prairie System to Kokomo.

6. Post-Sale Jurisdiction. In the 44158 Order, we issued Prairie a CTA to provide sewage disposal service in the service area. Under Ind. Code § 8-1-2-89(j), once the Commission has approved the sale of the Prairie System to Kokomo and the transaction is consummated, the Commission no longer has jurisdiction over the sewage disposal service. Therefore, the CTA issued in the 44158 Order will expire on the date that the sale and transfer is completed and Prairie shall be under no further obligation to provide sewage disposal service in the service area governed by the CTA. In addition, on the date that the sale and transfer is completed, Mr. Astbury will no longer be bound to the personal, financial guarantee that he provided in Cause No. 44158. Within 10 days after the completion of the sale and transfer of the Prairie System to Kokomo, Prairie shall file a report in this Cause, serving all parties, notifying the Commission of the date of completion of the sale and transfer.

In the interlocal agreement, Kokomo and Tipton County agreed that in the event that Tipton County wishes to purchase the Prairie System but cannot agree with Kokomo on a purchase price or the terms of the sale, the parties would submit the disputed issue to the Commission for resolution. As stated above, under Ind. Code § 8-1-2-89(j), once the sale and transfer of the Prairie System to Kokomo is complete, "the [C]ommission shall have no control over the sewage disposal service henceforth rendered by such municipality as a municipally owned utility" In light of this statute and the fact that we do not regulate Kokomo's municipal sewer utility, we question whether the Commission would have jurisdiction over such a dispute. Should Kokomo and Tipton County wish to bring this issue before the Commission, they must provide a basis upon which the Commission would have jurisdiction to decide the dispute.

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

1. Prairie is authorized to sell and transfer its sewage disposal system, including all of Prairie's sewer utility assets, to Kokomo consistent with the terms of this Order and the Asset Purchase and Sale Agreement.

2. Prairie's CTA to provide sewer service in Tipton County, Indiana, which was issued in the 44158 Order, shall expire on the date of the completion of the sale and transfer of

the Prairie System to Kokomo and Prairie shall be under no further obligation to provide sewage disposal service within the service area governed by the CTA.

3. As of the date of the completion of the sale and transfer of the Prairie System to Kokomo, Mr. Astbury shall be released from the Shareholder Personal Guarantee provided pursuant in Cause No. 44158.

4. Within 10 days of the completion of the sale and transfer of the Prairie System to Kokomo, Prairie shall file a report in this Cause, serving all parties, notifying the Commission of the date of completion of the sale and transfer.

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

STEPHAN, HUSTON, WEBER, AND ZIEGNER CONCUR; MAYS-MEDLEY ABSENT:

APPROVED: DEC 30 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