ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF KINGSBURY UTILITY CORPORATION FOR A NEW SCHEDULE OF RATES AND CHARGES FOR WASTEWATER SERVICE	)))	CAUSE NO. 44590 U APPROVED: OCT 05 2016

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ORDER OF THE COMMISSION

Presiding Officers:
James F. Huston, Commissioner
Loraine L. Seyfried, Chief Administrative Law Judge

On February 9, 2015, Kingsbury Utility Corporation ("KUC") filed a Small Utility Rate Application. The Commission issued a Phase 1 Order on March 2, 2016 ("Phase 1 Order"), authorizing KUC to increase its rates and charges for water service. In addition, because of the lack of sufficient evidence to determine the reasonable amount of cost that should be approved for KUC's proposed Travis Ditch project, the Commission required KUC to solicit competitive bids for the project and submit evidence in support of its chosen bid.

On June 8, 2016, KUC filed a copy of the bids received and testimony in support of its chosen bid. The Indiana Office of Utility Consumer Counselor ("OUCC") filed testimony in response to KUC's filing on July 27, 2016. KUC filed its reply to the OUCC's testimony on August 19, 2016.

In accordance with an August 29, 2016 Docket Entry, the parties met with Commission staff on September 12, 2016, to further discuss the details and issues related to the Travis Ditch project.

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

1. **Notice and Jurisdiction.** KUC is a public utility as that term is defined in Ind. Code § 8-1-2-1(a) and qualifies for treatment as a small utility under Ind. Code § 8-1-2-61.5. Under Ind. Code § 8-1-2-61.5, the Commission may enter an order affecting a utility's rates and charges for service without a formal public hearing. Accordingly, the Commission has jurisdiction over KUC and the subject matter of this proceeding.

2. **KUC's Characteristics.** KUC is a for-profit, combined water and wastewater utility that serves approximately 77 residential, commercial, and small-industrial wastewater customers in LaPorte County. KUC's water and wastewater infrastructure is over 60 years old and was originally installed to serve a United States Army munitions plant covering an area of approximately 3,000 acres.

3. **Background and Relief Requested.** In the underlying case that led to the Phase 1 Order, KUC proposed to include an estimated cost amount of $106,313.04 for the replacement of an exposed force main crossing Travis Ditch. The OUCC did not dispute the need to replace the exposed main, but disagreed with the proposed cost. However, because we found that neither party provided sufficient evidence to allow for our determination of a reasonable amount of cost for the Travis Ditch

project, we included $18,400 (the OUCC estimate plus a 15% contingency amount) of cost for the Travis Ditch project on a preliminary basis. We instructed KUC to solicit competitive bids to perform the work and to submit the results of the bids and evidence supporting its chosen bid to the OUCC and the Commission under this Cause. After consideration of the bids and supporting evidence as well as any responsive evidence from the OUCC and rebuttal evidence from KUC, the Commission indicated it would make a finding about the reasonable cost of the project and adjust the authorized financing accordingly.

KUC requests approval of the bid from Woodruff & Sons, Inc. ("Woodruff & Sons") for horizontal directional drilling to replace the force main at an estimated cost of $39,387.50, plus a portion of $11,900 in common site costs to be shared with KUC's water utility.[1] The bid assumes the force main will be constructed of high-density polyethylene.

4. Evidence Presented.

A. KUC's Direct Evidence. Zachary Baker, KUC's engineer, explained that in response to the Commission's directive in the Phase 1 Order, KUC contacted the LaPorte County municipal utility operators for information concerning authorized water and wastewater contractors. He stated that KUC sent a proposal letter to three qualified entities and provided a copy of the bids received in response to the proposal letter. He said that after discussions with each entity concerning the best method for replacement of the force main given soil conditions and environmental concerns, KUC determined that a horizontal directional drilling approach was the best method. In addition, this method was either similar or less expensive than performing an open cut.

Mr. Baker stated that KUC intended to proceed with the Woodruff & Sons' proposal because it was cost competitive and they were familiar with KUC's systems.

B. OUCC's Evidence. James T. Parks, Utility Analyst II in the Water/Wastewater Division of the OUCC, questioned whether KUC solicited competitive bids as required by the Phase 1 Order. Mr. Parks stated that KUC did not follow competitive bidding requirements. KUC did not openly advertise the project to attract bidders, but instead pre-selected contractors from a small list. It also did not require sealed bids or quotations and did not set the date and time for the opening of the bids publicly.

Mr. Parks also pointed out the differences in the project as indicated in the proposed bids and previously described in the underlying case. He noted that the prior design included replacing 137 feet of force main, whereas the current design proposed to replace 159 feet of main. He stated that KUC did not explain the reason for the change in the length. Noting that KUC had not explained or supported the length of the proposed main replacement, he repeated his recommendation to shorten the replacement to 60 feet to decrease construction costs. He also noted that the discrepancy in elevation related to established standards continues to exist in the new design.

Mr. Parks recommended the Commission find that KUC did not solicit competitive bids. He also recommended that if KUC is allowed to correct the identified deficiencies in the bidding process, then KUC should be required to consider shortening the length of line to be replaced.

[1] KUC also operates a water utility and has proposed to replace at the same time an exposed water main also crossing Travis Ditch, which is under consideration in Cause No. 44589 U.

C. **KUC's Rebuttal Evidence.** KUC disagreed that the Phase 1 Order mandated KUC pursue a specific competitive and sealed bidding process. KUC contends that it complied with the Phase 1 Order by soliciting bids from qualified and known construction companies in the area that were identified by the municipal utility of LaPorte.

As for the appropriate length of main to be replaced, KUC noted that its engineer has on-site personal knowledge of the location, soil considerations, and other relevant factors specific to the project. KUC also noted that he oversaw the bidding process and discussed the two most cost-effective means of pursing the project that crosses a sensitive, regulated waterway. KUC argued that the OUCC's criticisms of the proposed project's details, however, were without any foundation, analysis or support by anyone with personal knowledge of the project or site.

KUC stated that the reasons for the change in the design of the project include the passage of time, further erosion of the ditch, the determination to use a horizontal direct drilling approach, and a local regulatory requirement for the main replacement at a greater depth. KUC also noted that the Travis Ditch Crossing serves a residential subdivision and several businesses. In addition, replacement of the force main would occur along with the replacement of KUC's water main.

Finally, KUC acknowledged the discrepancy in elevation with established standards. KUC pointed out that the project is also subject to the LaPorte County Drainage Board's requirement for five feet of cover between the bottom of the ditch and the top of the replacement lines. KUC indicated that it would ensure that its plans are compliant with all applicable standards.

D. **Additional Evidence from the September 12, 2016 Meeting.** KUC confirmed that the proposed length of the force main was necessary for several reasons, including the nature of erosion in the area and the sandy soil conditions. The use of a horizontal directional drilling method was also the least intrusive method for installation of the new force main and was not expected to require any additional environmental or permitting requirements.

5. **Commission Discussion and Findings.** As indicated above, our Phase 1 Order required KUC to solicit competitive bids to complete the Travis Ditch project to provide a basis for determining a reasonable amount of project cost and authorizing an appropriate amount of financing. Although the OUCC takes issue with the bid process used by KUC, we note that our Phase 1 Order did not specify how KUC was to solicit or receive competitive bids for the project. While we understand the advantages of conducting the bidding as indicated by the OUCC, which typically is done by public entities, the intent of our requirement was to ensure that KUC adequately defined the project and obtained more than one rough estimate for its completion given the OUCC's initial concerns with the project estimate.

The evidence presented demonstrates that KUC contacted the LaPorte municipal utility to obtain information about possible competent and reputable contractors from which it could solicit bids for the Travis Ditch project. KUC secured three possible entities familiar with the utility industry, provided them with information concerning the project, and requested they respond with bids for completion of the Travis Ditch project. KUC received three responses outlining the associated costs with the project requirements. Accordingly, we find that KUC has satisfied the Phase 1 Order requirement to solicit competitive bids and provides us with a sufficient basis on which to determine the reasonableness of the project costs.

KUC indicated that it intends to proceed with the Woodruff & Sons proposal to replace the force main using a horizontal directional drilling approach at a bid amount of $39,387.50 along with estimated common costs of $5,950. Both the bid and the additional information from KUC's engineer and utility operator concerning the conditions of the surrounding land supports the need for the replacement of a longer section of the force main than that suggested by the OUCC.

As the Phase 1 Order authorized $18,400 for the Travis Ditch project on a preliminary basis, KUC requests approval for additional financing of $26,937.50. Based on the evidence presented, we find the proposed project costs to be reasonable and authorize KUC to incur additional long-term debt in an amount not to exceed $26,937.50 at market rates for terms not to exceed 30 years. The actual costs incurred for the Travis Ditch project are subject to the requirements for implementation of KUC's Phase 2 rates as specified in the Phase 1 Order.

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

1. KUC's request for additional financing authority up to an amount of $26,937.50 is approved.

2. This order shall be effective on and after the date of its approval.

FREEMAN, HUSTON, WEBER, AND ZIEGNER CONCUR; STEPHAN ABSENT:

APPROVED: OCT 05 2016

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

Mary M Becerra

Mary M. Becerra
Secretary of the Commission