

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

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PETITION OF CWA AUTHORITY, INC. FOR)
APPROVAL PURSUANT TO INDIANA CODE)
SECTION 8-1-31.5-13 TO CHANGE THE) CAUSE NO. 44990 SIA 2
AMOUNT OF ITS SYSTEM INTEGRITY)
ADJUSTMENT AND IMPLEMENT A) APPROVED: DEC 19 2018
SCHEDULE OF RATES AND CHARGES)
APPLICABLE THERETO.)

ORDER OF THE COMMISSION

Presiding Officers:

Sarah E. Freeman, Commissioner

Loraine L. Seyfried, Chief Administrative Law Judge

On September 17, 2018, CWA Authority, Inc. (“CWA” or “Petitioner”) filed a Verified Petition with the Indiana Utility Regulatory Commission (“Commission”) pursuant to Ind. Code § 8-1-31.5-13 seeking approval to implement a change in its initial system integrity adjustment (“SIA”). On September 18, 2018, CWA filed the direct testimony and exhibits of Debarati (“Debi”) Bardhan and Mark C. Jacob.

On October 17, 2018, the Indiana Office of Utility Consumer Counselor (“OUCC”) filed its report and the direct testimony of Margaret A. Stull. On October 30, 2018, CWA filed the publisher’s affidavit showing proof of publication of the legal notice provided in this Cause. On November 9, 2018, CWA filed the rebuttal testimony of Petitioner’s witnesses Bardhan and Jacob. On November 20, 2018, CWA filed its response to a November 14, 2018 Docket Entry.

The Commission conducted an evidentiary hearing on November 26, 2018, at 1:30 p.m. in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Proof of publication of the notice of the hearing was incorporated into the record and placed in the official files of the Commission. CWA and the OUCC appeared and participated in the hearing. At the hearing, the Petitioner’s and OUCC’s testimony and exhibits were admitted into the record and witnesses were made available for cross-examination.

Based on the applicable law and the evidence of record, the Commission now finds:

1. **Notice and Jurisdiction.** Notice of the filing of the Verified Petition was published by CWA on September 21, 2018. Notice of the public hearing in this Cause was given and published by the Commission as required by law. Petitioner is an Indiana nonprofit corporation and an instrumentality of the Board of Directors for Utilities of the Department of Public Utilities of the City of Indianapolis d/b/a Citizens Energy Group (“Citizens Energy Group”) created pursuant to an Interlocal Cooperation Agreement entered into by the City of Indianapolis, its Sanitary District, and Citizens Energy Group in accordance with the Interlocal Cooperation Act,

Ind. Code ch. 36-1-7. Through the Interlocal Cooperation Agreement, CWA is vested with Citizens Energy Group's statutory powers under Ind. Code § 8-1-11.1-3(c)(9) to adopt rates and charges and terms and conditions for the provision of wastewater utility service. Accordingly, the Commission has jurisdiction over CWA's rules and rates for utility service. In addition, CWA is an "eligible utility" as that term is defined by Ind. Code § 8-1-31.5-7. Therefore, the Commission has authority over CWA and the subject matter of this proceeding.

2. Petitioner's Characteristics. CWA provides wastewater collection and treatment services to approximately 242,000 retail customers in Marion County and wastewater treatment services to surrounding communities. Pursuant to a Management and Operating Agreement approved by the Commission in Cause No. 43936, Citizens Energy Group provides management and operational services necessary for the operation of the wastewater utility owned by CWA.

3. Relief Requested. Pursuant to Ind. Code ch. 8-1-31.5 ("SIA Statute"), CWA requests the Commission determine CWA's proposed SIA of \$9,949,843, and a corresponding System Integrity Adjustment Rate ("SIA 2 Rate") of \$0.4461 per 1,000 gallons is properly calculated. CWA also requests authorization and approval of the rate schedules reflecting the SIA to be recovered from CWA's non-industrial customers set forth in Attachment DB-3 to Petitioner's Exhibit 1.

4. Evidence Presented.

A. CWA's Case in Chief. Ms. Bardhan, Citizens Energy Group's Director, Regulatory Affairs, testified that the proposed SIA 2 Rate recovers the difference between actual revenues for the 12-month period ended July 31, 2018 and authorized revenues for the same 12-month period. She indicated that Petitioner's Exhibit 1, Attachment DB-2 details Petitioner's proposed SIA 2 Rate calculations using the three inputs of authorized revenues, actual revenues, and budgeted non-industrial volumes (1,000 gallons).

Ms. Bardhan stated that CWA's authorized revenues as shown on Line 1 of Attachment DB-2 were calculated by prorating the annual operating revenues from two compliance filings made in Cause No. 44685, which used the same proration methodology approved by the Commission in Cause No. 44990 ("SIA 1"). She stated that authorized revenues approved by the Commission in the July 26, 2017 Phase 2 Compliance Filing for one month ($\$280,541,200 * 1/12$), along with authorized revenues approved by the Commission in the August 12, 2017 Compliance Filing regarding the debt service true-up for eleven months ($\$278,846,500 * 11/12$) were used to determine CWA's authorized revenues of \$278,987,725.

Ms. Bardhan explained that CWA's actual revenues of \$268,402,786 reflected on Attachment DB-2, Line 4 as Actual Revenues subject to SIA were determined by subtracting Miscellaneous Revenues SIA in account 536011 of the trial balance (\$16,089,525) from Total Actual Revenues as reported in the CWA income statement and trial balance for the 12 months between August 2017 and July 2018 (\$284,492,311). Since the rate approved in SIA 1 was not included in CWA's basic rates and charges approved in its most recent general case, Ms. Bardhan stated that it was appropriate to exclude Miscellaneous Revenues SIA based on the definition of actual revenues in Ind. Code § 8-1-31.5-2. Ms. Bardhan confirmed that all revenues CWA booked

for August 2017 through July 2018 were included in the Total Actual Revenues.

Next, Ms. Bardhan addressed the cumulative deficit and the system integrity collar, which she stated were not applicable to the SIA 2 filing. She stated the purpose of calculating CWA's cumulative deficit "is to determine the extent to which the System Integrity Collar had been exceeded in SIA 1" and that CWA's system integrity collar "was satisfied in the SIA 1 filing when CWA's cumulative deficit exceeded its calculated one-time System Integrity Collar." Pet. Ex. 1 at 7. Further, Ms. Bardhan testified that the Adjustment Amount of \$10,584,939 (Attachment DB-2, Line 7) was determined by subtracting Actual Revenues subject to SIA (Attachment DB-2, Line 4) from Authorized Revenues (Attachment DB-2, Line 1), and when multiplied by 0.94 as required by Ind. Code § 8-1-31.5-11, resulted in an SIA of \$9,949,843.

Ms. Bardhan testified that Lines 9-13 in the "Reconcile Actual Cost to Recovery" section of Attachment DB-2 were left blank because under Ind. Code § 8-1-31.5-15 ("Section 15"), an approved adjustment amount must be reconciled against adjustment revenues received during the same prior 12-month period. She noted that CWA's approved adjustment amount (\$6,139,673), which became effective January 1, 2018, would be eligible for reconciliation against adjustment revenues received once it had been in effect for the 12-month period ending December 31, 2018. As a result, CWA would reconcile the difference between the adjustment amount and adjustment revenues from SIA 1 in its next SIA filing, i.e., Cause No. 44990 SIA 3. In support of this approach, she cited to Ordering Paragraph 4 of the Commission's December 28, 2017 Order in SIA 1 ("SIA 1 Order"). She further noted that because the SIA 1 had not been in effect for a full 12-month period, the Commission's directive in the SIA 1 Order to indicate whether the amount spent on eligible infrastructure improvements exceeded the amount of adjustment revenues collected would be provided in its next SIA filing.

To arrive at the SIA 2 Rate of \$0.4461 per 1,000 gallons as shown on Attachment DB-2, Line 16, Ms. Bardhan stated that the Total SIA (Attachment DB-2, Line 14) was divided by CWA's Budgeted Non-Industrial Volumes of 22,303,786 (Attachment DB-2, line 15), which were based on fiscal year 2019 budget volumes consistent with the methodology approved by the Commission in the SIA 1 Order.

Finally, Ms. Bardhan described the additional workpapers that were filed in SIA 2 as a result of agreements CWA made in SIA 1. She also described additional workpapers that were filed in SIA 2 as a result of CWA's meeting with the OUCC as directed by the Commission in its Order in SIA 1.

Mr. Jacob, Citizens Energy Group's Vice President Capital Programs & Engineering and Quality, explained why the SIA revenues being requested in this proceeding are needed to support CWA eligible collection system needs for rehabilitation. He said that CWA's eligible infrastructure improvements are comprised of its collections system assets. Mr. Jacob described the condition and age of a large part of the collection system as being very old and in need of significant and continuous investment, noting that CWA experiences on average approximately 80 sewer failures throughout its 3,200-mile collection system each year, and more than half of CWA's sewer infrastructure is close to 50 years in age. Mr. Jacob affirmed that since the SIA was implemented on January 1, 2018, CWA has and will continue to spend SIA revenues approved in

SIA 1 only on eligible infrastructure improvements through the applicable 12-month period, which ends December 31, 2018. He also noted that any statements about the amount spent on eligible infrastructure improvements compared to the amount of adjustment revenues collected in SIA 1 would be provided in a subsequent SIA filing.

Mr. Jacob testified that CWA has an ongoing need to collect adjustment revenues for system investment and rehabilitation, especially given the size, age, and condition of the collection system. As an example of why CWA needs to continue investing in aging infrastructure, he discussed two recent high visibility and high impact sewer failures. For information on appropriate collection system reinvestment levels, Mr. Jacob referred to a 2011 American Water Works Association Benchmarking Study, which indicated that CWA's reinvestment level would be in the bottom quartile of utilities. Finally, Mr. Jacob agreed that any adjustment revenues received as a result of this proceeding would only be invested on eligible infrastructure improvements.

B. OUCC's Case-in-Chief. Margaret A. Stull, Chief Technical Advisor in the Water/Wastewater Division of the OUCC, provided testimony regarding the OUCC's calculation of the change to CWA's SIA. Ms. Stull testified she did not agree with CWA's calculation of its SIA because it includes several material omissions. First, CWA's calculation does not incorporate a system integrity collar. Second, CWA did not calculate its SIA on a cumulative basis as required by Ind. Code §§ 8-1-31.5-6, -10, and -12. Instead, CWA calculated its proposed SIA using only year two revenues. Finally, she noted CWA did not include any reconciliation of the SIA 1 adjustment revenues. Ms. Stull performed her own calculation on behalf of the OUCC correcting for those omissions. Ms. Stull calculated an SIA of \$0.2062 per thousand gallons, a decrease from its currently authorized SIA of \$0.0536 per thousand gallons.

Ms. Stull asserted that an SIA determination requires five steps. The first step is to calculate the cumulative excess or cumulative deficit, which is the difference between the eligible utility's actual revenues and the authorized revenues measured on a cumulative annual basis from the effective date of the Commission's order in the eligible utility's most recent general rate case. The second step is to calculate a system integrity collar, which is done by multiplying the authorized revenues by 2.0%. The third step is to subtract the system integrity collar (the product of step 2) from the cumulative excess or cumulative deficit, as the case may be (the product of step 1). The fourth step is to multiply the amount determined in Step 3 by 94%. The final step is to divide the SIA amount determined in Step 4 by estimated volumes to determine the SIA rate to be included in an eligible utility's tariff.

Ms. Stull explained CWA's calculation of its proposed SIA change and noted that CWA did not calculate and subtract a system integrity collar (i.e., Steps 2 and 3). She also noted that CWA did not include any reconciliation of the difference between the adjustment amount authorized in SIA 1 and adjustment revenues collected as required by Section 15.

With respect to the system integrity collar, Ms. Stull disagreed with CWA's position that the cumulative deficit and the system integrity collar are not applicable to this SIA 2 filing. She asserted that the plain language of Ind. Code §§ 8-1-31.5-10, -12, -13, and -14 do not establish that the system integrity collar is a one-time, threshold requirement. She considered the plain language of those sections to indicate the collar is to be calculated and applied on a cumulative basis along

with the cumulative excess or deficit during the up to four years the SIA may be collected by an eligible utility. Ms. Stull noted that CWA had a cumulative deficit of \$22,470,218 based on her consideration of the 24 months since CWA's most recent rate case order. She determined that CWA's cumulative system integrity collar is \$10,933,466 determined by multiplying 2.0% times CWA's cumulative authorized revenues of \$546,673,314.

With regard to reconciling SIA revenues, Ms. Stull testified that Section 15 states that at the same time a utility files its annual petition under Ind. Code § 8-1-31.5-13 ("Section 13"), the utility shall reconcile the difference between the adjustment amount approved by the Commission for a previous 12-month period and the adjustment revenues received by the utility during the same 12-month period. She asserted that if a utility's SIA is not in effect for a full 12-month period, its adjustment revenues can be reconciled by using a 12-month period that includes less than a full year of adjustment revenues. She noted that Section 15 simply states the adjustment amount approved for a previous 12-month period must be reconciled with the adjustment revenues received during the same 12-month period. Because a utility is required to file subsequent adjustments to its SIA within 30 days after the end of each 12-month period following the date on which the eligible utility files a petition under Ind. Code § 8-1-31.5-12 ("Section 12"), Ms. Stull stated a utility will never have received a full 12 months of adjustment revenues when it files a petition under Section 13. She stated that, if possible, these two sections should be read in a manner that gives effect to the terms of both sections. She stated that CWA's reading, on the other hand, essentially nullifies the part of Section 15 that requires a reconciliation to be filed "at the same time" as a petition under Section 13.

Ms. Stull explained how a 12-month period that collected fewer than 12 months of SIA revenues could be reconciled. She noted the 12-month period used by CWA in its SIA calculation is August 1, 2017 through July 31, 2018. Although the initial SIA was implemented on January 1, 2018, the reconciliation adjustment in this case would reconcile the revenues authorized and collected during the period August 1, 2017 through July 31, 2018. The remaining SIA 1 revenues collected during the period August 1, 2018 through December 31, 2018 would be reconciled in CWA's next SIA filing, along with the SIA 2 revenues collected during the period January 1, 2019 through July 31, 2019.

Ms. Stull testified it is not reasonable for CWA to wait until its next SIA filing to reconcile its SIA 1 adjustment revenues and that she considered her proposal to be more consistent with the SIA Statute. However, she stated that if the Commission decides not to reconcile any SIA 1 revenues at this time, CWA should be required to file a reconciliation of its SIA 1 adjustment revenues on February 1, 2019, which is one month after the end of the 12-month period of SIA 1 revenues. She said this would allow for a more timely reconciliation of CWA's SIA revenues.

Ms. Stull also noted that CWA did not provide a statement regarding the amount spent on eligible infrastructure improvements as required by the SIA 1 Order. She asserted that CWA should provide these statements and certifications in each SIA filing. She explained that, regardless of whether an SIA has been in effect for a full 12-month period, CWA can and should provide a statement regarding the amount spent on eligible infrastructure improvements. She also noted that CWA did not certify that the SIA 2 revenues to be collected will be used for eligible infrastructure improvements as required by Section 12, which she said also applies to this case.

C. CWA's Rebuttal. Ms. Bardhan responded to the OUCC's proposed SIA. She disagreed with the OUCC's understanding of how the change in the SIA amount is to be calculated, noting the OUCC has construed the SIA Statute in a way so as to impose requirements of a Section 12 proceeding on a Section 13 proceeding.

With regard to the system integrity collar, Ms. Bardhan noted that the OUCC's reliance on the definitions of system integrity collar and cumulative excess or deficit is erroneous because neither of those terms are referenced in Section 13. Rather, those terms are referenced in Section 12 and Ind. Code § 8-1-31.5-14 which, when read together with Section 13, make clear that the system integrity collar is "a one-time qualifier" that enables an eligible utility to file for an SIA under section 12. She testified that unlike the discretionary nature of an initial filing under Section 12, Section 13 filings are mandatory in nature and therefore do not require additional qualifiers or prerequisites. Ms. Bardhan stated that OUCC's inclusion of a system integrity collar in Section 13 filing undermines the intent of the SIA Statute because it would result in utilities that are under-recovering to collect less than they otherwise would and utilities that are over-recovering to refund to customers less than they otherwise would.

Regarding the OUCC's application of the cumulative excess or deficit concept, Ms. Bardhan stated that because the definitions of actual revenues and authorized revenues are confined to a 12-month period, the OUCC's use of actual revenues and authorized revenues over an extended period of time beyond 12 months is contrary to the plain language of the SIA Statute. She further noted that the term cumulative excess or deficit is the only term in the SIA Statute that is measured on a cumulative basis; used in Ind. Code §§ 8-1-31.5-6, -10, and -14; and not used in conjunction with actual revenues or authorized revenues to determine the adjustment amount. She asserted that the OUCC had read a requirement regarding the use of cumulative actual and authorized revenues that is simply not in Section 13 and such use resulted in erroneous authorized and actual revenue calculations extending over multiple 12-month periods, instead of a 12-month period as indicated in the SIA Statute.

Finally, Ms. Bardhan testified that the OUCC's proposal that a reconciliation occur in this proceeding even though adjustment revenues have been collected for less than a full 12-month period should be rejected because it is contrary to the SIA Statute and the SIA 1 Order. She explained that Section 15 requires an eligible utility to reconcile the approved adjustment amount for a prior 12-month period against adjustment revenues received for the same 12-month period. She noted that this approach is consistent with Ordering Paragraph 4 of the SIA 1 Order, which directs CWA to include reconciliations of adjustment amounts and adjustment revenues required by Section 15 in subsequent Section 13 proceedings, "to the extent an SIA is in effect for CWA for a 12-month period." In addition, Ms. Bardhan asserted that the OUCC's flawed position is revealed by Ms. Stull's statement that "[a]lthough the [SIA] was implemented on January 1, 2018, the reconciliation adjustment in this case would reconcile the revenues authorized and collected during the period August 1, 2017 through July 31, 2018."

Ms. Bardhan also disagreed with the OUCC's alternative proposal that a reconciliation of SIA 1 revenues could be filed in February 2019 as contrary to the express directives of Section 15 that reconciliations are to occur at the same time petitions are filed under Section 13. She stated

such an additional proceeding would result in unnecessary administrative burdens and processes to CWA, the OUCC, and the Commission with no appreciable benefit.

Mr. Jacob responded to the OUCC's contention that CWA can and should provide a statement regarding the amount spent on eligible infrastructure improvements by reiterating that the full 12-month period had not yet run its term and CWA did not have a final number. However, Mr. Jacob provided Attachment MCJ-R1, which was a November 1, 2018 Compliance Filing by CWA in SIA 1. He said the Compliance Filing informed the Commission that as of September 30, 2018, CWA had invested \$6,614,367 on eligible infrastructure improvements, which exceeded the SIA amount of \$6,139,673 approved in SIA 1. Mr. Jacob noted that additional construction activities would occur during the remaining months of calendar year 2018, which costs would be reported in Petitioner's next SIA filing.

Mr. Jacob also disagreed that CWA failed to certify that SIA 2 revenues to be collected will be used for eligible infrastructure improvements, pointing to pages five and six of his case-in-chief testimony where he testified that CWA agreed that any adjustment revenues received as a result of this proceeding would only be invested on eligible infrastructure improvements.

5. Commission Discussion and Findings. Petitioner seeks approval to change the amount of its SIA, which was established and approved in the SIA 1 Order, and to implement a revised Rider B to its tariff to effect such change. CWA filed its petition in accordance with Section 13 and Ordering Paragraph 4 of the SIA 1 Order, which provides: “[f]or each year that the SIA approved herein remains in effect, CWA shall file a petition in accordance with Ind. Code § 8-1-31.5-13 for a change in its adjustment amount no later than October 28.” This is the first filing Petitioner has made under Section 13 subsequent to the SIA 1 Order.

Attachment DB-2 of Petitioner's Exhibit 1 sets forth CWA's calculation of its proposed revised SIA 2, showing that as of the 12 months ending July 31, 2018, CWA had under-recovered its authorized revenues by \$10,584,939 for that 12-month period. After accounting for the 94% statutory limitation imposed by Ind. Code § 8-1-31.5-11, CWA proposed an SIA of \$9,949,843. Petitioner then divided its proposed SIA by the budgeted volumes for its non-industrial customers to calculate a rate of \$0.4461 per 1,000 gallons. Petitioner requests approval of a new Rider B to its tariff, which sets forth the \$0.4461 volumetric SIA 2 rate as well as the applicable monthly SIA 2 rates for unmetered non-industrial customers based on the number of occupants in the household.

The OUCC proposed an SIA of \$0.2062 per 1,000 gallons. In accordance with our finding in the SIA 1 Order that the use of budgeted non-industrial volumes to calculate an SIA rate was appropriate, both Petitioner and the OUCC used the same budgeted volumes to calculate their respective SIA 2 rates. However, the OUCC's proposed SIA 2 rate is lower than Petitioner's proposed SIA 2 rate as a result of the OUCC's application of a system integrity collar and a proposed reconciliation adjustment. In addition, although the OUCC used a 24-month period to calculate authorized and actual revenues, that use did not itself affect the result of its calculation.

A. Actual Revenues and Authorized Revenues. As we explained in the SIA 1 Order (at 5), to calculate an adjustment amount as defined in Ind. Code § 8-1-31.5-3, a “utility first compares its authorized revenues to its actual revenues.” The difference between the

authorized revenues and actual revenues produces an adjustment amount. The SIA Statute defines authorized revenues to mean, “the annual operating revenues for a twelve (12) month period in the eligible utility’s most recent general rate case.” Ind. Code § 8-1-31.5-5. Likewise, the SIA Statute defines actual revenues as “the annual operating revenues that an eligible utility receives or accrues for a twelve (12) month period authorized for recovery through basic rates and charges approved by the commission in the eligible utility’s most recent general rate case.” Ind. Code § 8-1-31.5-2.

The plain and unambiguous language in the SIA Statute defines “authorized revenues” and “actual revenues” as revenues for a 12-month period and the SIA 1 Order emphasized that a 12-month period is the statutory basis for comparing authorized and actual revenues. The OUCC has proposed an SIA 2 rate based on a comparison of authorized and actual revenues using a 24-month period. We reiterate the conclusion we reached in the SIA 1 Order that a 12-month period must be used to compare authorized and actual revenues to calculate an adjustment amount. We therefore reject the OUCC’s proposed use of a 24-month period to determine authorized and actual revenues.

We find that the authorized revenues Petitioner used to calculate its SIA 2 rate, which were determined using the proration methodology we approved in the SIA 1 Order, are correct. We also find that the actual revenues Petitioner used to calculate its SIA 2 rate, which exclude adjustment revenues received and accrued pursuant to the SIA 1 Order, are correct.

B. System Integrity Collar. The OUCC recalculated CWA’s proposed SIA 2 rate by applying a system integrity collar. The OUCC believes that a system integrity collar must be calculated and applied on a cumulative basis along with the cumulative excess or deficit during the up to four years the SIA may be collected by an eligible utility. CWA’s position is that satisfaction of the system integrity collar is a prerequisite to initially establishing an SIA under Section 12 of the SIA Statute, and, once satisfied, the system integrity collar is no longer applicable in subsequent SIA proceedings filed under Section 13 of the SIA Statute. As discussed below, we find that the language of the SIA Statute supports CWA’s position.

An eligible utility seeking approval to establish an SIA for the first time must file a petition under Section 12 establishing that the eligible utility’s system integrity collar has been satisfied on a cumulative basis following the effective date of the commission’s order in the eligible utility’s most recent general rate case. Section 12(a). Section 10 of the SIA Statute defines the system integrity collar as 2% of an eligible utility’s authorized revenues. It goes on to provide that “an eligible utility’s system integrity collar is satisfied when the eligible utility’s cumulative excess or deficit equals or exceeds the eligible utility’s system integrity collar.” Thus, the plain language of the SIA Statute makes clear the system integrity collar is a prerequisite to establishing an initial SIA under Section 12 and is satisfied once the initial SIA is established.

Moreover, although Section 12 contains language suggesting the system integrity collar cannot be included in the calculation of the SIA established under that Section, there is no language in Section 13 stating that the system integrity collar is to be applied again in subsequent proceedings filed under Section 13 of the SIA Statute, such as this proceeding. Indeed, the term system integrity collar is not referred to at all in Section 13. “Generally, when the legislature uses particular language in one section of the statute but omits it in another section, we presume that it is intentional.” *In re J.B.*, 61 N.E.3d 308, 312 (Ind. Ct. App. 2016); *Andrianova v. Ind. Family and*

Soc. Servs. Admin., 799 N.E.2d 5, 16 (Ind. Ct. App. 2003) (same) (citing *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987)); *City of Crown Point v. Misty Woods Properties, LLC*, 864 N.E.2d 1069, 1076 (Ind. Ct. App. 2007) (noting provisions in two sections of statute were omitted from another section and stating, “courts will not add something to a statute that the legislature has purposely omitted.”). If the General Assembly had intended for the system integrity collar to apply to proceedings filed under Section 13, it would have included language in Section 13 stating the system integrity collar applies to such proceedings. *J.B.*, 61 N.E.3d at 311 (“It is just as important to recognize what a statute does not say as it is to recognize what it does say.”).

For the foregoing reasons, we find the system integrity collar is only a threshold test that must be satisfied before an SIA may begin. CWA’s system integrity collar was satisfied in the SIA 1 proceeding, which was filed under Section 12, and is not applicable in this proceeding, which was filed under Section 13.

C. The OUCC’s Proposed Reconciliation Adjustment. Finally, the OUCC argued that Petitioner’s proposed SIA 2 rate is overstated because CWA did not include a reconciliation of SIA 1 adjustment revenues received during the 12-month period ending July 31, 2018. CWA responded that it did not include a reconciliation in this proceeding because adjustment revenues authorized in the SIA 1 Order have been collected for only seven months. CWA stated that it would begin reconciling any over-collection or under-collection of previously approved adjustment revenues in its SIA 3 filing, after a full 12 months (i.e., January 1, 2018 through December 31, 2018) of adjustment revenues have been collected.

Statutes are generally to be read as a whole and interpreted with their content in mind. *Loparex, LLC v. MPI Release Technologies, LLC*, 964 N.E.2d 806, 818 (Ind. 2012), citing *Smith v. U.S.*, 508 U.S. 223, 233 (1993) (“Just as a single word cannot be read in isolation, nor can a single provision of a statute.”). In addition, courts will not presume that the legislature intended language used in a statute to be applied illogically or to bring about an unjust or absurd result. *City of Carmel v. Steele*, 865 N.E.2d 612, 618 (Ind. 2007). In determining legislative intent, a court considers the objects and purposes of a statute as well as the effects and repercussions of its interpretation. *State v. International Business Machines*, 964 N.E.2d 206, 209 (Ind. 2012). The court will seek to give a statute practical application by construing it in a way favoring public convenience and avoiding absurdity, hardship, and injustice. *Merritt v. State*, 829 N.E.2d 472, 475 (Ind. 2005).

The purpose of the SIA Statute is to allow an eligible utility that is earning less (or more) than its Commission authorized revenues to collect (or return) a portion of that difference in revenue through an SIA. *See* Section 12. The SIA may be collected until the earlier of 48 months after the initial SIA is approved or an order is issued in its next rate case. Section (12)(d). The legislature could have allowed the SIA to continue without change until either of these events occurred. However, it chose instead to require the eligible utility to seek under Section 13 a change in its adjustment amount every year until one of the two events occurred. When the eligible utility files its Section 13 petition to change its adjustment amount, Section 15 also requires the utility to reconcile the difference between the adjustment amount approved and the adjustment revenues received.¹ The inclusion of Sections 13 and 15 of the SIA Statute appear to recognize that a utility’s

¹ We note that Section 11 of the SIA Statute limits an eligible utility’s recovery to 94% of its adjustment amount.

revenues will fluctuate over time and hence its SIA should be adjusted on an annual basis to ensure that the utility is only collecting revenues within the amount authorized by the Commission in the utility's last rate case.

Section 15 of the SIA Statute sets forth the requirements for reconciling the difference between the adjustment amount and adjustment revenues in Section 13 proceedings. Section 15 provides that,

[a]t the same time an eligible utility files a petition under section 13 of this chapter, the eligible utility shall reconcile the difference between:

- (1) the adjustment amount approved by the commission for a previous twelve (12) month period; and
- (2) the adjustment revenues received by the eligible utility during the same twelve (12) month period.

The eligible utility may recover from or credit to customers the reconciliation amount through a system integrity adjustment by filing a petition under section 12 of this chapter.

The plain language of Section 15 requires a utility to reconcile the difference between an approved adjustment amount for a prior 12-month period and the adjustment revenues collected during that same 12-month period when it files a Section 13 petition. CWA has filed a Section 13 petition in this Cause. CWA argues that it cannot perform such reconciliation because the SIA has not been in effect for 12 months. However, nothing in Section 15 (or anywhere else in the SIA Statute) requires the SIA to have been in effect for at least 12 months before a reconciliation can occur. Instead, Section 13 simply requires the utility to determine (1) the "adjustment amount"² approved by the Commission for *a previous 12-month period*, and (2) the "adjustment revenues"³ collected during that same 12-month period. The SIA 1 Order approved an adjustment amount (as defined in Section 3) of \$6,531,567, which was based on the 12-month period of August 2016 – July 2017. Although the resulting SIA was approved for implementation beginning in January 2018, the adjustment amount approved by the Commission was for the 12-month period of August – July. Therefore, we agree with the OUCC and see no reason that a reconciliation cannot be performed for the same 12-month period (i.e., August 2017 – July 2018) used to determine the adjustment amount.

CWA also argues that the OUCC's position is inconsistent with the Commission's language in its SIA 1 Order requiring, "[t]o the extent an SIA is in effect for CWA for a 12-month period, CWA shall include the reconciliation adjustment amounts and adjustment revenues required by Ind. Code § 8-1-31.5-15 in each petition filed under Ind. Code § 8-1-31.5-13." We disagree. As indicated above, Section 15 requires a reconciliation be done when a Section 13 petition is filed. CWA's interpretation that a reconciliation be done only when an SIA has been implemented for 12 months would effectively nullify this requirement for a utility's first filing under Section 13.⁴ We also note that we used the phrase "to the extent" and not "if." This reflected

² Ind. Code § 8-1-31.5-3

³ Ind. Code § 8-1-31.5-4

⁴ There is no scenario under the SIA Statute in which any utility would have recovered its SIA for 12 months before it files for an initial adjustment under Section 13.

our understanding of the fact that CWA's first petition seeking to adjust its SIA under Section 13 would have to be filed before CWA collected 12 months of adjustment revenues. The "extent" was seven months of adjustment revenues.

Even if CWA were correct that the language in the SIA 1 Order only required CWA to perform a reconciliation if the SIA had been implemented for 12 months, we find that interpretation of the SIA Statute to be incorrect for the reasons set forth above. Administrative agencies are free to change past rulings and are not bound by prior policy or decisions when they prove flawed or in need of change, provided its reasons for the change are explained. *Cnty Care Ctrs., Inc. v. Ind. Dept. of Pub. Welfare*, 523 N.E.2d 448, 451 (Ind. Ct. App. 1988).

Because the SIA was only in effect during seven months of the 12 month-period (i.e., January – July 2018), the OUCC calculates a monthly adjustment amount by prorating the approved annual adjustment amount over 12 months and then compares the prorated monthly adjustment amount from January through July 2018 to the adjustment revenues collected during that same period. While we agree that the SIA 1 adjustment amount was approved (and adjustment revenues were collected) only during the seven-month period of January – July 2018, CWA's SIA is based on the budgeted volumes of its non-industrial rate customers and therefore, any reconciliation should be determined in the same manner.

Finally, there was some discussion during cross-examination at the hearing about whether a reconciliation includes the recovery from or credit to customers of the reconciliation amount, particularly because Section 15 includes a statement that the eligible utility "may recover from or credit to customers the reconciliation amount through a system integrity adjustment by filing a petition under section 12 of this chapter."⁵ (emphasis added). It is most likely that "may" is used here because it is not known whether the reconciliation amount will result in a recovery from or credit to customers.

We fail to understand why the legislature would require the utility to perform a reconciliation if not for the purpose of recovering from or crediting to customers the reconciliation amounts. In other words, if the reconciliation amounts were not to be recovered from or credited to customers in conjunction with an SIA adjustment, there would be no reason to perform a reconciliation. In construing a statute, a court will presume that the legislature did not enact a useless provision. *Hinshaw v. Bd. Of Commr's of Jay Co.*, 611 N.E.2d 637, 638 (Ind. 1993). In addition, we find the purpose of the SIA Statute, as discussed above, is fulfilled by refunding or crediting to customers any reconciliation amounts in the utility's Section 13 filing. It is also consistent with every other tracking mechanism administered by the Commission. While we recognize that "may" is generally construed as a discretionary term, where the act to be done concerns the public interest, permissive words will be construed as mandatory. *Solar Sources, Inc. v. Air Pollution Control Bd.*, 409 N.E.2d 1136, 1139 (Ind. Ct. App. 1980), citing *Clifton v. State*, 95 N.E. 305 (Ind. 1911); *State ex rel. Oliver v. Grubb*, 85 Ind. 213 (Ind. 1882) (where the public good requires it, "may" will be construed to mean "shall").

⁵ It is also unclear why Section 15 provides for implementation of the reconciliation through Section 12, which addresses a utility's request for an initial SIA, as opposed to Section 13, which addresses adjustments to an approved SIA, and we believe it is likely a scrivener's error.

For reasons set forth above, we find that CWA should have included a reconciliation with its Section 13 petition in this Cause. Accordingly, CWA shall file under this Cause within 10 days of this Order a reconciliation that computes the difference between the SIA 1 revenues authorized based on the budgeted non-industrial monthly volumes per 1,000 gallons for the seven months of the 12-month reconciliation period less the SIA 1 revenues recorded to yield the over- or under-collection of the adjustment amount.

D. Conclusion Regarding Petitioner's Proposed SIA 2. Based on the evidence of record and for the foregoing reasons, we find that Petitioner's proposed SIA 2 was not properly calculated. Petitioner shall recalculate its proposed SIA 2 in accordance with this Order by including the required reconciliation and file a revised Rider B, with supporting workpapers, under this Cause for review and approval by the Commission's Water/Wastewater Division. Any objections to the revised Rider B shall be filed within 10 days, after which the Presiding Officers will schedule an attorneys conference to discuss the procedure for resolving any objections that cannot be resolved by the parties.

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

1. Petitioner's proposed SIA is not properly calculated and not approved.
2. Petitioner shall recalculate its proposed SIA 2 in accordance with this Order by including the required reconciliation and file a revised Rider B, with supporting workpapers, under this Cause for review and approval by the Commission's Water/Wastewater Division.
3. Petitioner is authorized to collect the applicable SIA approved in Cause No. 44990 and its related Section 13 subdockets until the earlier of the following:
 - a. 48 months after the date of the SIA 1 Order.
 - b. The date on which the Commission issues an Order in Petitioner's next general rate case proceeding.
4. For each year an SIA approved under Cause No. 44990 and its related Section 13 subdockets remains in effect, CWA shall file a petition in accordance with Section 13 for a change in its adjustment amount no later than October 28. CWA shall include the reconciliation of adjustment amounts and adjustment revenues required by Section 15 with each petition filed under Section 13. Petitioner shall also file contemporaneously with each petition the workpapers and documents necessary to support its calculations, testimony explaining the calculations and the basis for those calculations, and a statement as to whether the amount spent on eligible infrastructure improvements exceeded the amount of adjustment revenues collected as a result of the most recently approved SIA.
5. Once the SIA is terminated, Petitioner shall file within 60 days a reconciliation for any unreconciled SIA.

6. In accordance with Ind. Code § 8-1-2-70, Petitioner shall pay the following itemized charges within 20 days of the date of this Order into the Commission general public utility fund account described in Ind. Code § 8-1-6-2, through the Secretary of the Commission:

Commission Charges:	\$ 2,096.98
OUCC Charges:	\$ 4,955.59
Legal Advertising Charges:	\$ <u>46.61</u>
 TOTAL:	 \$ 7,099.18

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

FREEMAN, HUSTON, KREVDA, OBER, AND ZIEGNER CONCUR:

APPROVED: DEC 19 2018

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



Mary M. Becerra
Secretary of the Commission