

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 3rd day of
February, 2016.

In the Matter of the Application of Indian Hills Utility)
Operating Company, Inc., to Acquire Certain Water)
Assets of I.H. Utilities, Inc. and in Connection)
therewith, Issue Indebtedness and Encumber Assets)

File No. WO-2016-0045

**ORDER APPROVING TRANSFER OF ASSETS
AND ISSUANCE OF CERTIFICATE OF CONVENIENCE AND NECESSITY**

Issue Date: February 3, 2016

Effective Date: March 4, 2016

Background

Indian Hills Utility Operating Company, Inc. (Indian Hills) filed an application to acquire the assets of I.H. Utilities, Inc. (IHU) and to provide water to IHU's customers in Crawford County, Missouri. IHU serves about 700 customers in and around Indian Hills subdivision, a residential and recreational lake development near Cuba, Missouri.¹ To facilitate the purchase and upgrade of the water system, Indian Hills seeks to secure a loan by collateralizing the water system assets. In order to provide water to the public, Indian Hills will also require a Certificate of Convenience and Necessity from this Commission.

IHU is an administratively dissolved corporation and did not join in the application. But, through a Statutory Trustee, it is a signatory to the agreement to transfer the

¹ Application (EFIS Docket Item 1), paragraph 2; Staff Memorandum (EFIS Docket Item 9), page 2.

company.² The Commission notified IHU of these proceedings and allowed it an opportunity to respond to the application. The company did not respond. The Commission also notified the County Clerk and Commission of Crawford County and set a date for intervention. There was no request to intervene.

Transfer of Assets

Under Section 393.190.1, RSMo, the Commission must authorize the transfer or encumbrance of a regulated utility's assets, unless such transfer is shown to be detrimental to the public interest.³

In its memorandum, the Staff of the Commission states that IHU, the transferor, obtained a certificate from this Commission in 1964. IHU is now administratively dissolved, and the water system needs improvements. The owner does not have the ability or desire to maintain the system. Staff reports that it has logged about 10 customer complaints and inquiries per year for the last 3 years about IHU, which is a marked increase from previous years. Staff further informs the Commission that it has received comments regarding the proposed transfer from 22 IHU customers, and all of them support the transfer.

The president of Indian Hills, the transferee, has experience with water and sewer systems and is the president of Hillcrest Utility Operating Company, Inc. and Raccoon Creek Utility Operating Company, Inc. Both of those systems are regulated by the Commission and are undergoing improvements.

² Agreement for Sale of Water System, Appendix E, attached to Application.

³ *Environmental Utilities, LLC v. Public Service Commission of Missouri*, 219 S.W.3d 256,265 (Mo. App. W.D. 2007).

Financing

Indian Hills is requesting Commission authority to allow it to collateralize the IHU system's assets to raise up to \$1,500,000. Indian Hills will use the funds primarily for the construction of a ground storage water tank, remote operations equipment, hydro-pneumatic tank variable frequency pumping equipment upgrades, permanent chlorine disinfection, the repair of known water taps with leaks, a new pitless well head installation, and a new water main installation to connect the ground storage tank to the water distribution system. Toward the acquisition, Indian Hills will contribute \$175,000 in equity to pay for professional civil engineering design for drinking water improvements mandated by the Department of Natural Resources, and for the professional survey services required to support those construction designs. The company estimates that the total cost of purchase and improvements will be \$1,700,000.

Staff notes that there are additional equity investors⁴ and that they will be active participants in ensuring that the capital is used efficiently. These additional investors could also be the source of additional capital. Nevertheless, Staff foresees the necessity to remain informed about the proposed financing and suggests certain conditions toward that end.

Staff recommends approval of the transfer and financing with its suggested conditions. Staff states that the transfer is in the public interest and that Indian Hills has adequate technical, managerial, and financial capacity to operate, maintain, and improve the facilities and provide service to customers.

⁴ Indian Hills Utility Operating Company, Inc. is wholly owned by Indian Hills Utility Holding Company, Inc., which is wholly owned by First Round CSWR, LLC, which is managed by Central States Water Resources, Inc.

Certificate of Convenience and Necessity

Section 393.170, RSMo, requires water corporations to obtain authority from the Commission before providing water service to the public. The Commission may grant such authority through a Certificate of Convenience and Necessity (certificate) after determining that the service is necessary or convenient for the public service. In making this determination in previous applications, the Commission has applied the following five criteria:

1. There must be a need for the service;
2. The applicant must be qualified to provide the proposed service;
3. The applicant must have the financial ability to provide the service;
4. The applicant's proposal must be economically feasible; and,
5. The service must promote the public interest.⁵

Decision

Both Staff and the company show that customers are currently being served by IHU. The need for continued water service is therefore evident. The above discussions show that Indian Hills has the managerial and financial ability to provide service. Based on the verified application and the verified recommendation of the Staff, the Commission independently finds that Indian Hills meets the criteria for the Commission to grant a certificate, concludes that granting the certificate to Indian Hills is necessary or convenient for the public convenience and will grant such authority. Finally, upon notice that the transfer of assets is complete, the Commission will cancel the certificate issued to IHU.

⁵ *In re Tartan Energy Company*, 3Mo.P.S.C. 173, 177 (1994).

Section 393.190.1, RSMo, requires a utility to seek Commission approval prior to transferring any property necessary and useful in the performance of its duties. Further, the Commission may not deny this transfer unless it is shown that the transfer is detrimental to the public interest.⁶ Indian Hills seeks such approval, and it has not been shown that the proposed transfer would be detrimental to the public interest. The Commission will therefore approve the proposed transfer, subject to those conditions suggested by Staff.

Staff also suggests that the Commission make no finding of the value of this transaction for ratemaking purposes, and make no finding that would preclude the Commission from considering the ratemaking treatment to be afforded these financing transactions or any other matter pertaining to the approval of the transfer of assets and the granting of a certificate to Indian Hills, including expenditures incurred related to water systems in the certificated service area, in any later proceeding. The Commission also recognizes that the plant-in-service depreciation reserve, contribution in aid of construction (CIAC), and CIAC amortization balances, as calculated by the Staff, as of August 31, 2015, for purposes of rate base for plant-in-service and depreciation reserve are to be included in the books and records of Indian Hills.

Finally, the Commission notes that Indian Hills and any successors or assigns bear the burden of proof, in subsequent rate cases where the financing relevant to this case is at issue. At that time, the Commission may order a hypothetical capital structure and cost of capital consistent with similarly situated small water companies in Missouri, or as the Commission may otherwise find appropriate.

⁶ *Environmental Utilities, v. Public Service Commission of Missouri*, 219 S.W. 3d 256, 265 (Mo. App. W.D. 2007).

THE COMMISSION ORDERS THAT:

1. Indian Hills Utility Operating Company, Inc. is granted a Certificate of Convenience and Necessity in the area served by I.H. Utilities, Inc.

2. Subject to the conditions set out in these ordered paragraphs, the transfer of assets from I.H. Utilities, Inc. to Indian Hills Utility Operating Company, Inc. is approved.

3. Indian Hills Utility Operating Company, Inc. is prohibited from closing on the assets or operating as a water utility unless it has operation, billing, and emergency answering arrangements (contracts) that can be in place, applicable to the specific service area, and exercised immediately upon closing of the assets.

4. Indian Hills Utility Operating Company, Inc. shall notify the Commission of closing of the I.H. Utilities, Inc.'s assets within 5 days after such closing.

5. I.H. Utilities, Inc. is authorized to cease providing service immediately after closing of the respective assets.

6. If closing of the I.H. Utilities, Inc. assets does not take place by March 27, 2016, Indian Hills Utility Operating Company, Inc. shall submit a status report by April 1, 2016.

7. If an initial status report must be submitted on April 1, 2016, then Indian Hills Utility Operating Company, Inc. shall file status reports every 30 days thereafter until closing takes place or Indian Hills Utility Operating Company, Inc. determines that the transfer will not occur.

8. Indian Hills Utility Operating Company, Inc. is authorized to operate using I.H. Utilities, Inc.'s existing tariff, on an interim basis, immediately after closing of the assets.

9. Indian Hills Utility Operating Company, Inc. shall file, within 30 days after closing of the assets, a tariff sheet, adopting I.H. Utilities, Inc.'s existing rules, rates and service charges.

10. Indian Hills Utility Operating Company, Inc. is authorized to use depreciation rates that are currently approved for I.H. Utilities, Inc., as shown in Attachment D to the Staff of the Commission's Memorandum.

11. Indian Hills Utility Operating Company, Inc. shall keep its financial books and records for plant-in-service and operating expenses in accordance with the NARUC Uniform System of Accounts.

12. Indian Hills Utility Operating Company, Inc. shall keep separate operations records particularly identifiable for the I.H. Utilities, Inc. system, including those for customer complaints/inquiries, vehicle mileage, equipment and telephone use records and customer accounts records.

13. Indian Hills Utility Operating Company, Inc. shall maintain time sheets, mileage logs and transportation expense, associated with Indian Hills Utility Operating Company, Inc. business, for all employees and officers, including Josiah Cox. Time sheets and mileage logs should specifically identify time and mileage by individual systems, the amount of time spent on construction projects and time spent on other activities such as non-regulated activities, including acquisition or merger activities, etc.

14. Indian Hills Utility Operating Company, Inc. shall track outside contractor expense for customer billing, customer calls, plant operation, mileage, equipment, labor, telephone and other office expenses for the Indian Hills Utility Operating Company, Inc.'s system, and for any other systems owned by its parent or by entities it owns, in a manner that would allow identification of costs that were incurred for Indian Hills business only.

15. Indian Hills Utility Operating Company, Inc. and I.H. Utilities, Inc. are responsible to pay the annual assessments that are due through Fiscal year 2015, in the amount of \$1,618.42, and for the Department of Natural Resources' fees, tax liabilities, or any other fees that could jeopardize title and control of the water utility assets.

16. Indian Hills Utility Operating Company, Inc. shall comply with all Commission rules including the filing of the annual report and keeping current on payments of the Commission's annual assessments.

17. Indian Hills Utility Operating Company, Inc. is authorized to collateralize its assets for purposes of the proposed financing arrangement.

18. Within 10 days after the issuance of any financing authorized by the order, Indian Hills Utility Operating Company, Inc. shall file a report including the amount of financing issued, date of issuance, stated return required, maturity date, redemption schedules or special terms, if any, use of proceeds, estimated expenses and the final executed financing agreement.

19. Indian Hills Utility Operating Company, Inc. and its affiliates, as identified in the Staff of the Commission's Memorandum, shall provide to the Staff of the Commission, upon reasonable written notice and during normal working hours, access to all books and record related to investments in Missouri regulated utility assets. This access to

information shall include, but not be limited to, information provided to or received from all proposed debt investors.

20. Indian Hills Utility Operating Company, Inc. shall file with the Missouri Public Service Commission all documentation required pursuant to the terms of the financing agreement. In the event that Indian Hills Utility Operating Company, Inc. is in violation of any terms of the financing agreement, it shall file a report with the Commission indicating its plan to cure such violation. If such violation is waived, then Indian Hills Utility Operating Company, Inc. shall indicate why the violation is waived and how long the waiver shall be effective.

21. The proceeds from the proposed financing shall be used only for the acquisition of I.H. Utilities, Inc.'s water utility assets, and the proposed tangible improvement to the water system that can be booked to plant in service for purposes of ratemaking.

22. Indian Hills Utility Operating Company, Inc. shall notify the Commission immediately if there are any changes to the current investment structure of investors in Indian Hills Utility Operating Company, Inc. or its affiliate investors. This notice shall include all documents executed to complete such investment structure or ownership changes.

23. In the event of default on the Indian Hills Utility Operating Company, Inc. loan, the certain debt investor(s) shall file a written plan with the Commission on how it will ensure continued funding necessary to maintain safe and adequate service for the Indian Hills Utility Operating Company, Inc.'s customers.

24. Within 30 days of the first billing sent to customers, Indian Hills Utility Operating Company, Inc. shall provide to the Staff of the Commission a sample of 10 such billing statements.

25. Indian Hills Utility Operating Company, Inc. shall provide an example of its communication efforts with the customers regarding the acquisition of the system and methods by which customers can contact Indian Hills Operating Company, Inc.

26. This order shall become effective on March 4, 2016.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Kenney,
Rupp, and Coleman, CC., concur.

Jones, Senior Regulatory Law Judge