ORIGINAL

Commissioner	Yes	No	Not Participating
Huston	V		
Freeman	V		
Krevda			V
Ober	V		
Ziegner	V		

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF COMMUNITY UTILITIES OF INDIANA, INC. FOR APPROVAL OF (1) EXPENDITURES FOR CONSTRUCTION OF ADDITIONS AND IMPROVEMENTS TO PETITIONER'S WASTEWATER UTILITY PROPERTIES, AND (2) THE INCLUSION OF THE VALUE OF SUCH NEW FACILITIES, INCLUDING PLAN DEVELOPMENT AND IMPLEMENTATION COSTS, IN PETITIONER'S RATE BASE IN FUTURE CASES.	) CAUSE NO. 45389	

APPROVED: MAY 05 2021

IURC LOFS
INTERVENOR'S CX-1
EXHIBIT NO. 6-28-22
DATE REPORTER

ORDER OF THE COMMISSION

Presiding Officers:
Stefanie N. Krevda, Commissioner
Jennifer L. Schuster, Administrative Law Judge

On June 10, 2020, Community Utilities of Indiana, Inc. ("CUII" or "Petitioner") filed its Petition. On June 11, 2020, CUII filed its case-in-chief and workpapers in this Cause. Pursuant to notice given as provided by law, the Indiana Utility Regulatory Commission ("Commission") held a prehearing conference in this Cause via WebEx on July 20, 2020 at 9:30 a.m. CUII, the Office of Utility Consumer Counselor ("OUCC"), and intervenor Lakes of the Four Seasons Property Owners' Association ("LOFS") all participated in the prehearing conference, and the Commission's prehearing conference order was issued on August 5, 2020. On September 30, 2020, the OUCC and LOFS filed their respective cases-in-chief. On October 15, 2020, CUII filed its rebuttal testimony.

Pursuant to notice given as provided by law, the Commission held an evidentiary hearing in this Cause via WebEx that began on November 20, 2020 at 9:30 a.m. and continued on November 30, 2020. CUII, the OUCC, and LOFS, by counsel, all participated in the hearing via WebEx, and the parties' evidence was admitted into the record without objection.

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

1. **Notice and Jurisdiction.** Due, legal, and timely notice of the prehearing conference and evidentiary hearing in this Cause was given by the Commission as required by law. Petitioner is a "public utility" within the meaning of that term in Ind. Code § 8-1-2-1 and is subject to the jurisdiction of the Commission in the manner and to the extent provided by law. CUII seeks preapproval of certain additions and improvements to its wastewater collection and treatment system pursuant to Ind. Code § 8-1-2-23. Accordingly, the Commission has jurisdiction over Petitioner and the subject matter of this proceeding.

OFFICIAL EXHIBITS

2. **Petitioner's Organization and Business.** CUII is a public utility incorporated under Indiana law with its principal office address located at 500 W. Monroe Street, Suite 3600, Chicago, Illinois. CUII was incorporated in 2015 for implementation of the merger into a single entity of the three Indiana subsidiaries of Utilities, Inc. ("UI") that provided water and wastewater services in Indiana: Twin Lakes Utilities, Inc. ("Twin Lakes"), Water Service Company of Indiana Inc. ("WSCI"), and Indiana Water Service, Inc. The merger was approved by the Commission's July 8, 2015 order in Cause No. 44587.

CUII provides water service to approximately 5,000 customers and wastewater service to approximately 3,300 customers using utility plant, property, equipment, and related facilities owned, operated, managed, and controlled by it that are used and useful for the convenience of the public in the provision of water and wastewater service. Petitioner's service area includes portions of Jasper, Lake, Newton, and Porter counties. CUII's Twin Lakes Operations collection system ("Collection System") is a separate sanitary sewer system originally constructed in the 1960s. CUII's Twin Lakes Operations Wastewater Treatment Plan ("WWTP") is a biological treatment plant originally constructed in the 1960s and expanded through the 1990s. The WWTP includes three trains of biological treatment. The facility is designed for a daily average flow ("DAF") capacity of 1.10 million gallons per day ("MGD") and a peak flow capacity of 3.58 MGD.

3. **Background and Relief Requested.** In CUII's last rate case, Cause No. 44724, we ordered CUII to develop and implement a program to handle inflow and infiltration ("I&I"):

> Petitioner shall develop a comprehensive I&I program to decrease wastewater backups in homes and manhole overflows and to eliminate water inflow and ground water infiltration into Petitioner's wastewater collection system. The I&I program shall specifically address how Petitioner will decrease inflow of rain and storm water into the wastewater system by working with LOFS to eliminate improperly installed residential sump pumps and roof downspouts and illegally connected drains. The I&I program shall also utilize Petitioner's comprehensive asset program to decrease infiltration of groundwater into the wastewater system through leaky joints, cracked pipelines, and deteriorated manholes.

CUII, Cause No. 44724, at 76 (Jan. 24, 2018) (the "44724 Order"). The 44724 Order also required CUII to participate in quarterly technical conferences and to demonstrate how it would remediate basement backups and manhole overflows.

In this Cause, CUII seeks preapproval of expenditures to construct additions and improvements to CUII's wastewater utility properties and confirmation that such approved improvements will be included in CUII's rate base in future rate cases once the improvements have been placed in service, as provided by Ind. Code § 8-1-2-23.

With respect to the Collection System, CUII is proposing to upgrade Lift Stations B and C with increased capacity, construct a new Lift Station D with increased capacity, replace the Lift Station C force main, construct a force main from Lift Station B to Lift Station D, and construct a force main from Lift Station D to the WWTP (collectively, the "Collection System Improvements Project" or "CSIP"). The stated intent of the Collection System Improvements Project in CUII's

Petition is to improve conveyance in the tributary areas to Lift Stations B, C, and D and to reduce the incidences of basement backups and manhole overflows.

CUII is also seeking preapproval of expenditures to upgrade the capacity of the WWTP from 1.1 MGD to 1.6 MGD by adding a new biological treatment process and by improving the auxiliary processes and equipment to support the new biological treatment process (the "WWTP Improvements Project") (collectively with the CSIP, the "Proposed Improvements"). CUII's stated intent of the WWTP Improvements Project is to provide a long-term solution for the WWTP to handle all incoming wastewater flow and meet all environmental permit limits.

4. CUII's Direct Evidence.

A. Steven Lubertozzi. Steven M. Lubertozzi, President of CUII, testified that CUII's wastewater collection and treatment system was originally constructed more than 50 years ago, and CUII has experienced sanitary sewer overflows ("SSOs") and basement backups, mostly due to wet weather events, since the initial development of the system. He stated that CUII has made improvements to the collection system over many years, yet problems persist, particularly during heavy rainfall events. According to Mr. Lubertozzi, CUII's WWTP facilities are nearing the end of their service life, and portions of the system are in poor condition. He also stated that the Indiana Department of Environmental Management ("IDEM") issued a Sewer Ban Early Warning letter to CUII, which indicates that the WWTP has reached or is approaching 90% of its hydraulic or organic design capacity.

Mr. Lubertozzi discussed the 44724 Order, which required CUII to develop a system improvement plan ("SIP") to address the following goals (referred to as the "Three Key Aspects"): (1) to decrease the total number of incidences of wastewater backups in homes; (2) to decrease the total number of incidences of manhole overflows; and (3) to decrease the total number of complaints of discoloration of drinking water. Mr. Lubertozzi provided an overview of Petitioner's SIP as it relates to the sanitary sewer system and testified that the SIP is designed to achieve the first two goals of the Three Key Aspects. In addition to the SIP proposed in this proceeding, Mr. Lubertozzi testified that CUII has taken aggressive steps to reduce I&I in the system. He opined that the SIP is necessary to meet the objectives set forth in the 44724 Order to decrease the incidences of wastewater backups and overflows and to ensure CUII can provide safe and reliable services to its customers.

Mr. Lubertozzi described the quarterly meetings between CUII and LOFS since its last rate case, as well all other technical meetings held among the parties to discuss CUII's Proposed Improvements. He testified that the estimated monthly rate impact on all wastewater customers, if the Commission grants CUII's request for preapproval in this Cause, is anticipated to be a bill increase of $66.90 (or $72.53 if allowance for funds used during construction ("AFUDC"), capitalized time ("Cap Time"), and legal fees are included). Mr. Lubertozzi opined that the completion of the Proposed Improvements is necessary to ensure that CUII can continue to provide safe and reliable wastewater service to its customers.

B. Sean Carbonaro. Sean Carbonaro, Director of Engineering and Asset Management for CUII, described the Proposed Improvements and the process CUII engaged in for engineer selection, design, bid, and contractor selection. Mr. Carbonaro testified about the reasons

he believed that the Proposed Improvements present the best approach for reducing SSOs and basement backups in the future. He also discussed why the SIP was developed and how CUII intends to implement the plan moving forward and summarized the various studies CUII has conducted on the system.

Mr. Carbonaro testified about CUII's efforts taken to date to mitigate SSOs and basement backups, including actions taken to reduce I&I in the system and improve the collection system. He stated that CUII would identify defects in the collection system to rehabilitate, repair, or replace components of the system, as necessary, in order to improve the condition of the collection system and reduce I&I. According to Mr. Carbonaro, CUII's I&I removal activities included investigating the sources of I&I through cleaning and televising, manhole inspections, flow monitoring, smoke testing and dye studies, home inspections, lateral televising, and addressing any identified defects through point replacements and repairs, sewer and manhole lining, installing manhole inflow dishes, eliminating prohibited connections, and making operational improvements. Although CUII's I&I removal efforts are ongoing, Mr. Carbonaro stated that CUII's engineering studies have identified that a 30% reduction in I&I is likely the maximum achievable with a comprehensive I&I reduction program, and CUII would have to reduce I&I in its system by greater than 60% to reduce the need for the CSIP. Thus, according to Mr. Carbonaro, an I&I removal program alone would not fully alleviate the conveyance issues within the collection system.

Mr. Carbonaro testified that the CSIP includes upgrading Lift Station B and C with increased capacity, constructing a new Lift Station D with increased capacity, replacing the Lift Station C force main, constructing a force main from Lift Station B to Lift Station D, and constructing a force main from Lift Station D to the WWTP. He explained that the intent of the project is to improve conveyance in the tributary areas to Lift Stations B, C, and D and to reduce the incidences of basement backups and manhole overflows. He described how the project was developed and the various alternatives CUII considered before confirming the scope of the project. Mr. Carbonaro explained that the proposed project targets the area that has historically experienced the most SSOs, and the proposed improvements would address 65 of the 87 precipitation-related SSOs since 2008 and 44 of the 45 precipitation-related SSOs since 2014. He opined that the project would benefit customers by reducing damage to their property and reducing raw sewage released in their community and the environment.

Mr. Carbonaro also discussed the proposed WWTP improvements, which include upgrading the capacity of the WWTP from 1.1 MGD to 1.6 MGD by adding a new biological treatment process and improving the auxiliary processes and equipment to support the new biological treatment process. He testified that these proposals would provide a long-term solution for the WWTP to handle all incoming wastewater flow and meet all environmental permit limits. Mr. Carbonaro testified that the project is necessary to address the condition of the WWTP, the lack of redundancy for treatment processes, and IDEM requirements. He stated that CUII analyzed alternatives to a facility expansion, including rehabilitation of existing structures and equipment, but concluded that these alternatives do not provide a long-term, cost-effective solution to meet the operational requirements of the WWTP and are not feasible to accomplish while the WWTP remains in operation. Mr. Carbonaro stated that the Proposed Improvements will benefit customers by increasing the hydraulic capacity of the facility and eliminating surcharges that could cause wastewater backups in homes or manhole overflows.

Mr. Carbonaro also described the engineering work and the competitive bidding processes CUII engaged in for developing the SIP, including the actions CUII took to reduce the total cost of the SIP. He testified that the estimated cost of the Proposed Improvements is approximately $23,860,580, which includes $4,148,088 for the CSIP and $19,712,491 for the WWTP projects.

5. OUCC's Evidence.

A. Scott A. Bell. Scott A. Bell, Director of the Water/Wastewater Division of the OUCC, testified about the estimated rate impact of CUII's Proposed Improvements. He testified that the inclusion of the proposed projects costs in rate base will eventually be borne by all customers in CUII's Twin Lakes Division and WSCI Division, even though none of the projects will be constructed in the WSCI Division. He concluded that CUII's estimate of a $133.87 monthly bill (a 118.24% increase to existing rates) resulting from the Proposed Improvements would be the highest bill of any Commission-regulated utility in Indiana.

Using CUII's capital improvement cost estimates, Mr. Bell calculated that the bill for a residential customer using 5,000 gallons per month would actually be $150.47 per month (a 145.3% increase to existing rates), which is significantly higher than the $133.87 bill estimated by CUII. He also discussed CUII's request to recover the cost of litigating this preapproval case. Mr. Bell ultimately recommended the Commission deny preapproval of CUII's estimated total expenditures for the Proposed Improvements, deny recovery of CUII's estimated $150,000 in litigation costs, and preapprove only those projects or portions of projects recommended by OUCC witness James T. Parks.

B. Richard J. Corey. Richard J. Corey, Utility Analyst in the Water/Wastewater Division of the OUCC, testified regarding the various costs CUII proposes to include in the capitalized costs of its Proposed Improvements. Mr. Corey testified the OUCC accepts CUII's estimates of AFUDC and capitalized labor. However, he testified that CUII provided no support for regulatory costs in its case-in-chief, and regulatory costs are not a common cost component of capital construction projects. Mr. Corey recommended that the Commission disallow the inclusion in rate base of any overages or excess costs incurred by CUII above the amount preapproved by the Commission in this Cause, absent the Commission granting additional approval for these costs prior to CUII's next rate case. He also recommended that the Commission deny CUII's request to capitalize regulatory costs.

C. James T. Parks. James T. Parks, P.E., Utility Analyst II in the Water/Wastewater Division of the OUCC, summarized the findings of past Commission orders and CUII's consultants that CUII's collection system continues to be plagued with excessive I&I from clear water entry into CUII-owned mains, laterals, and manholes, customer-owned laterals, and illegal connections. Mr. Parks testified that CUII reported that its system experiences quick and sharp flow increases, often within a few minutes of the onset of a rain event, indicating illegal inflow (drainage) connections to the sanitary system. He noted that CUII recognizes its inflow problem, but has not yet effectively dealt with it by identifying the sources and methodically removing them.

Mr. Parks stated that CUII has known about its I&I problem, including illegal connections such as sump pumps and downspouts, since the 1990s. He noted that, 30 years ago, the

Commission directed CUII to identify such illegal connections and required their disconnection. *See CUII*, Cause No. 39050, at 26 (April 17, 1991). He stated that CUII had sump pump disconnection programs in 1992 and 2011 and opined that CUII has not followed the Commission's directions from prior orders to address its long-term I&I problems causing SSOs and basement backups, including the mandate in the 44724 Order to reduce these discharges by developing and using a comprehensive I&I program to reduce inflow from illegal connections and reduce groundwater infiltration into its system.

Mr. Parks testified that CUII has identified sources of I&I over several years, but has not implemented steps to remove some of the excessive clear water. He noted that CUII is not seeking preapproval of any projects to replace, repair, or line gravity sewers, manholes, or other collection system assets to remove excessive I&I sources. CUII's consultant Strand Associates stated that up to 30% of the I&I could be removed, but CUII's proposal contains no projects related to removing I&I. Instead, CUII has proposed to double the capacities of Lift Stations B, C, and D to route sewage flows and excessive I&I away from the west side's main gravity sewer through another new force main directly to a replacement 1.6 MGD wastewater plant that is designed to treat the excessive I&I.

Mr. Parks testified that CUII's proposed CSIP would result in higher flows to the WWTP. CUII's consultants reported wet weather events caused peaking factors of more than 20, which he stated is more typical of combined sewers than separate sanitary sewer systems such as CUII's system. He stated that neither CUII nor its consultants determined a level of control target (i.e., design storm event) for overflows and basement backups which should be established before proceeding with CUII's Proposed Improvements and corresponding rate base additions and rate increases. He recommended that CUII benchmark I&I levels, track actual I&I sources, including illegal connections, to document when CUII's I&I removal efforts have successfully disconnected the illegal inflow. He also suggested that CUII follow up on the findings from the 2019 Sanitary Sewer Evaluation Study performed on both basins M7 and M8 to locate and remove major I&I sources before determining whether lift station capacity increases and the addition of long force mains are needed.

Mr. Parks recommended that the Commission deny CUII's proposed CSIP to replace Lift Stations B, C, and D and install new force mains as premature because CUII has not fully developed and implemented a comprehensive I&I program to remove excessive I&I impacting these lift stations. He agreed with CUII's proposed plan to install pressure gauges and flow meters at Lift Stations B, C, and D and recommended that this plan be extended to Lift Stations J and L to obtain accurate flow readings and to assist in troubleshooting lift station pumping problems. He also recommended that CUII install area velocity meters in lines upstream of the WWTP and locations that CUII knows are flow bottlenecks or have basement backups.

Mr. Parks discussed issues with CUII's existing Parshall flume influent flow meter and opined that it lacks proper hydraulic conditions because it uses one level measurement point instead of the required two points. He stated that the influent flow meter is also improperly configured, is subject to upstream flow disturbances, and is submerged during high flows. According to the Baxter & Woodman hydraulic profile, the flume becomes submerged at approximately 3.05 MGD and fully submerged (100%) at 4.1 MGD. Mr. Parks testified that these hydraulic issues cause inaccurate peak flow readings that CUII relied upon to size its proposed

improvements. He stated that he did not agree that peak flows routinely exceed 7.0 MGD and noted that CUII operators and engineering consultants previously noted inaccurate influent flow readings in 2007 (Strand Associates) and 2008 (McDonough Associates), but that current CUII staff and consultants appeared to be unaware of the flume problems. Mr. Parks testified that the maximum flow into the WWTP would be 5.6 MGD based on a 2.8 MGD maximum capacity of the 18-inch gravity sewer and the 2.8 MGD peak pumped flow received via force mains from Lift Station J and Lift Stations K and L.

Mr. Parks stated that CUII had not mentioned any influent flow meter issues in technical conferences or past proceedings. He also observed that CUII appears to have had no project to correct its flume problems and had not notified its current consultants of meter errors at high flows so they could compensate for the errors in flow modeling and WWTP design calculations. He also testified that CUII did not follow the 2007 Strand Associates recommendations to install flow meters in upstream sewer to establish treatment plant flows.

Mr. Parks testified that, in sizing the proposed 1.6 MGD replacement WWTP, CUII's consultants used the faulty influent flow data and then selected the highest monthly flow in a 41-month period (June 2015) rather than analyzing historical data to calculate the current average (not peak) flow over a representative period. He stated that future design average flows should equal current average flows plus growth over the planning period (in this case to 2038) and I&I reductions. He testified that Baxter & Woodman used design flows developed by others and did not independently establish or confirm them. Mr. Parks stated that he believed this was a fundamental error because population estimates, assumed flow capacities, assumed pollutant loads, and sludge production quantities are all oversized due to the faulty flow data used to set the design flows. Mr. Parks also noted that CUII's proposed new WWTP is designed for 3,137 current customers and only 43 additional customers over the next 20 years, yet the design average flow increased substantially from 1.1 MGD to 1.6 MGD DAF.

Mr. Parks compared design parameters for CUII's existing Twin Lakes WWTP and CUII's proposed plant to show how oversized the replacement WWTP is for current actual and future flows and pollutant loads. He stated that, to temporarily address overflow and basement backup problems, CUII seeks a $21.3 million rate base addition to build a replacement plant designed to serve the same population and the same $cBOD_5$ load as its current WWTP. He noted that ratepayers would only gain minor benefits from the significant cost of this proposed expansion, which also would not address excessive I&I. Mr. Parks recommended that CUII focus instead on finding and removing inflow sources through the comprehensive I&I program ordered by the Commission in the 44724 Order and other orders.

Mr. Parks recommended that the Commission deny CUII's preapproval request for the WWTP, including the oxidation ditch treatment system, because the existing treatment plant can be upgraded at a much lower cost, the design average flow is not based on typical sizing calculations, and peak capacities are based on erroneous influent flow readings from the Parshall flume. He stated that CUII has not performed the Commission-ordered analyses of lower-cost alternatives, such as conversion of two unused thickener tanks for extended aeration tanks, adding final clarifiers for peak flows, internal piping changes to remove hydraulic bottlenecks within the plant, and additional sludge storage. He stated that CUII's proposed WWTP includes unnecessary facilities, including sludge processing equipment in a new sludge thickener building, an operations

building, and a new UV effluent disinfection system. Mr. Parks recommended that the Commission deny preapproval of Petitioner's switch to UV disinfection because CUII's existing sodium hypochlorite system, installed in 2002 and 2013, is effective at disinfecting flows up to 5.3 MGD. Mr. Parks also suggested that the Commission deny preapproval of CUII's proposed sludge improvements because they are based on overstated future sludge quantities. He stated that a much lower-cost alternative exists—to continue using CUII's current sludge processing and disposal practices and add a second sludge storage tank. He also recommended that the Commission deny preapproval of CUII's proposed operations building.

Mr. Parks noted that the WWTP does have screening and grit removal issues, as well as peak flows imposed on the plant due to excessive I&I. He noted that internal piping appears to be limited in size and prone to clogging, and, coupled with hydraulic limitations of existing structures, that causes the WWTP to be a flow bottleneck at Twin Lakes. He supported adding both preliminary treatment processes, screening, and grit removal, along with a chemical phosphorus removal system at the WWTP.

6. LOFS's Testimony.

A. Rick Cleveland. Rick Cleveland, LOFS's Community Manager, stated that LOFS residents have paid steadily increasing rates since 1991 and are concerned that, if CUII's preapproval is approved, the average monthly bill for CUII's wastewater customers will more than double and be approximately 30% higher than the highest average wastewater bill in the state reported by the Commission. He testified that such a high bill will alarm prospective new property owners and may be intolerable for existing property owners, especially those with a fixed income. Mr. Cleveland noted that, based on Mr. Holden's observations, LOFS believes that there are less costly alternatives that will improve CUII's wastewater system and reduce instances of basement backups and overflows.

Mr. Cleveland stated that, although overflow problems still exist, there have been fewer instances of basement backups and manhole overflows in the recent past. He opined that CUII should focus on eliminating I&I before spending millions on a new plant to handle I&I and noted that CUII has not completed the comprehensive I&I removal work mandated in the 44724 Order. Mr. Cleveland also stated that CUII should have monitored its system for illegal connections among LOFS landowners and said that he supports CUII's efforts to eliminate illegal connections.

Mr. Cleveland recommended that the Commission deny the portions of CUII's proposal identified by Mr. Holden because CUII's projects are unnecessary, oversized, and premature and will result in a large increase to customers' monthly wastewater bills.

B. Robert Holden. Robert W. Holden, II, professional engineer and Vice President of Wessler Engineering, testified about CUII's history of wastewater overflows into basements and from manholes in the LOFS community. Based on his review of CUII's testimony, exhibits, data response, and his site visit observations of the WWTP and CUII collection system on August 5, 2020, Mr. Holden concluded that the WWTP is functioning well and that the lift stations in the collection system are in good working order. He stated that the televising records show that conditions within the collection system are problematic, with evidence of site drainage suggesting that private sources of inflow continues to be a route of storm relief in the area.

Mr. Holden explained that the wastewater collection system is old and has significant I&I, with inflow being the most serious issue. He stated that he observed, through televised sewers, areas of sags in the pipe, direct penetrations of service connections, and utility penetrations that do not appear to have been addressed. He opined that, if CUII had properly maintained its system, customers would likely have not experienced years of backups and would have had more gradual rate increases.

Mr. Holden testified that the WWTP and collection system have received limited capital investment for minor replacements and improvements. He opined that it appears that CUII does not engage in the level of regular replacements and upgrades that could be implemented to maximize the condition of the facilities, noting no evidence that improvements are being made to address deficiencies identified in the studies CUII has conducted to date. Mr. Holden stated that, although CUII has repeatedly engaged consultants to conduct system studies, CUII does not use the data to fix problems as it should. As an example, he discussed studies from RJN Group showing significant sources of inflow in some of CUII's basins and noted that it does not appear that CUII has fixed or attempted to fix these problems.

According to Mr. Holden, CUII's proposed collection system improvement project is not a sound approach from an engineering perspective because CUII has not implemented a comprehensive I&I removal program, but instead has decided to pursue a very expensive and oversized solution that expands the collection system and WWTP to convey and treat all of the I&I. He stated that CUII's current levels of I&I will worsen over time if the cause of I&I is not addressed.

Mr. Holden disagreed with CUII's assumption that there is a cap of 30% on the level of possible I&I removal, noting in his experience that I&I reduction efforts are difficult to quantify, but are not capped. He testified that the flow metering presented in the Strand Report indicates several areas with significant wet weather peaking factors associated with inflow, which likely present opportunities for a successful I&I removal program to remove more than 30% of the clearwater flow.

According to Mr. Holden, CUII's proposed collection system lift station improvement projects will not effectively solve its collection system issues. Under the proposal, CUII would have three dramatically oversized lift stations, and force mains, resulting in a collection system that is much larger than that required and reduced cycle times resulting in odor, increased lift station operational issues, and potential septic force main conditions.

Mr. Holden recommended that CUII focus on remediating significant manhole and foundation drainage issues in the northeast portions of the community, which he said are responsible for an estimated 200,000 gallons per day ("GPD") during wet weather events. He also suggested that CUII complete its efforts to identify and disconnect improper connections to the collection system, such as driveway drains, open cleanouts, and sump pumps. He stated that, until an effective I&I reduction program has been implemented, the appropriate sizing of the proposed collection system improvements cannot be determined, and the associated costs cannot be justified.

Thus, Mr. Holden recommended that the Commission deny preapproval of the proposed $4.1 million collection system projects.

Regarding CUII's proposed WWTP projects, Mr. Holden testified that the existing facility is providing a compliant level of treatment and that the full extent of CUII's WWTP projects is unnecessary. He stated that, while the WWTP may be hydraulically overloaded in wet weather, current dry weather flows and loadings to the facility are within the design capacity of the facilities as they exist now. He testified that CUII's proposed expansion of the WWTP to 1.6 MGD is not necessary to serve CUII's existing or future customers. Mr. Holden testified that the IDEM warning letters merely suggest that CUII's system has experienced overflows, which is indicative of a problem with CUII's collection system and not CUII's WWTP performance. He stated that a viable alternative to CUII's proposed $19 million WWTP expansion is to install a second DAVCO package plant unit (at a savings of $5 million to $8 million), which could provide redundant treatment and thereby remove the existing aeration basins from service, provide the use of the existing secondary clarifiers for storm flows, and allow construction without needing to take units offline.

Mr. Holden concluded that the most prudent course of action is for CUII to focus first on its I&I removal program and collection system improvements for at least 36 months and take steps to remove as much I&I as is reasonably possible before revisiting the issue of WWTP expansion. He opined that certain aspects of the WWTP projects, with an estimated total cost of $8.15 million, could be performed to address the immediate pressing needs of the facility while allowing for efforts to further reduce the I&I.

7. CUII Rebuttal.

A. Mr. Lubertozzi. On rebuttal, Mr. Lubertozzi testified that he disagreed with the OUCC's and LOFS's recommendation to focus on remediating I&I before moving forward with the Proposed Improvements. He opined that I&I reduction is a costly and time intensive endeavor, and CUII's consultants maintain that CUII will not be able to reduce I&I to a level where it will eliminate the need for the Proposed Improvements. He testified that CUII could end up spending millions of dollars and several years on I&I reduction, only to have to make these improvements later. He stated that CUII continues to believe that the goal of the parties is to eliminate service quality issues altogether, and CUII designed and presented its SIP in the technical conferences and the quarterly reports mandated by the 44724 Order to achieve this goal.

Regarding rate impact, Mr. Lubertozzi testified that CUII has identified ways to mitigate the rate impact on existing customers, including phasing in the Proposed Improvements over a longer period of time or delaying implementation of new base rates in response to the Proposed Improvements prior to July 2022 (except in an emergency). He opined that, while phasing in the improvements is not optimal from an engineering, efficiency, or service quality perspective, it would allow the corresponding rate impact to be phased in, as well. He stated that any delay in the implementation of rates should be paired with the deferral of depreciation expense and continued accrual of post-in-service AFUDC at the full weighted cost of capital.

Mr. Lubertozzi also responded to the accounting, ratemaking, and regulatory issues raised by Mr. Bell and stated that CUII interpreted the 44724 Order to require preapproval. He stated that

CUII is not seeking approval of the estimated $150,000 of regulatory costs at this time and will seek approval of the actual costs in a future base rate case. Mr. Lubertozzi stated CUII is willing to limit its request in any future case to similar dollar-for-dollar recovery in its next rate case, which would allow CUII to recover its actual regulatory costs associated with this Cause, but without earning a return on such costs. He also testified that he disagreed with Mr. Corey's recommendation to disallow costs more than the preapproved cost estimate, absent Commission approval, prior to CUII's next rate case.

B. Mr. Carbonaro. Mr. Carbonaro testified that he disagreed with Mr. Parks's and Mr. Holden's recommendations that the Commission deny preapproval of the CSIP expenditures because CUII has not developed and implemented a comprehensive I&I program. He stated again that CUII has implemented a comprehensive I&I program and remediated sources of I&I and opined that an I&I removal program alone will not be enough to alleviate the conveyance issues within the collection system.

Mr. Carbonaro also responded to Mr. Parks's recommendation that the Commission should deny CUII's preapproval of proposed WWTP improvements because the plant capacity is not based on typical sizing calculations, the peak capacities are based on erroneous influent flow readings from the Parshall flume, and because the existing facility can be upgraded at far less cost. Mr. Carbonaro argued that there were errors in Mr. Parks's capacity calculations and explained how CUII's consultants calculated the proposed 1.6 MGD (DAF) capacity for the WWTP. Based on the analysis conducted by Baxter & Woodman, Mr. Carbonaro testified that reducing the plant capacity from 1.6 MGD to 1.3 MGD would only result in a construction cost reduction of $385,000. He also responded to Mr. Parks's testimony regarding CUII's influent flow data and argued that the potential plant upgrades Mr. Parks recommends will result in a facility with less peak flow capacity than the existing facility.

Mr. Carbonaro stated that Mr. Parks's recommendations regarding the WWTP improvements do not address CUII's current operational issues at the WWTP, including the need for redundancy, insufficient capacity, an insufficient aeration system, and lack of a comprehensive SCADA system. He again cited the warning letter CUII received from IDEM because the WWTP has reached or is approaching 90% of its hydraulic or organic design capacity. Responding to Mr. Holden's recommendations regarding the WWTP, he testified that CUII considered adding a fourth treatment train, but found that it would not address the issues with the existing WWTP facility, and operational costs of the plant would be high. Thus, CUII chose to not pursue addition of a fourth treatment train.

According to Mr. Carbonaro, CUII has identified ways to phase in the proposed projects to reduce the immediate rate impact on its customers. With respect to the CSIP, Mr. Carbonaro testified that CUII could defer construction of the Lift Station B and C improvements and only construct the Lift Station D improvements to save $2 million. He testified this option would provide some relief to the West Lake Shore Drive gravity sewer, but could risk SSOs at other manholes or in basements and would result in no improvement to recurrent SSOs in the Lift Station C tributary area. With respect to the WWTP improvements, Mr. Carbonaro testified that CUII could remove the incorporation of excess flow tanks (repurpose the package plant and south aeration tanks) from the project scope and reduce the construction cost by approximately $780,000. He testified that removing the excess flow tanks would leave the facility at risk if peak flows

exceeded 6.6 MGD and would potentially result in SSOs. He also stated that CUII could remove the office and garage portions of the proposed operations building, but it would require the building to be redesigned and would likely cost more to add these options later.

Overall, Mr. Carbonaro testified that CUII could potentially reduce the Collection System Improvements Project by $2 million and the WWTP by $1.08 million to $1.18 million to mitigate the rate impact in the short term. However, he opined that phasing in the improvements would reduce the benefits of the proposed projects and are not optimal for addressing CUII's issues.

8. Commission Discussion and Findings. In this Cause, CUII seeks preapproval of $23.8 million of expenditures for two categories of wastewater infrastructure projects pursuant to Ind. Code § 8-1-2-23, which provides:

> Unless a public utility shall obtain the approval by the commission of any expenditure exceeding ten thousand dollars ($10,000) for an extension, construction, addition or improvement of its plant and equipment, the commission shall not, in any proceeding involving the rates of such utility, consider the property acquired by such expenditures as a part of the rate base, unless in such proceeding the utility shall show that such property is in fact used and useful in the public service; Provided, That the commission in its discretion may authorize the expenditure for such purpose of a less amount than shown in such estimate.

In *American Suburban Utilities, Inc.*, Cause No. 41254 (April 14, 1999), we set forth our analytical framework for considering a request for preapproval of expenditures pursuant to Ind. Code § 8-1-2-23:

> When faced with such a request, the first question we must ask is whether an expenditure of any amount is reasonably necessary to assure reasonable and adequate service. If so, we must proceed to the second question: what amount reasonably needs to be invested? Once we answer the first question affirmatively, we cannot simply deny in its entirety a request for approval of expenditures. If we did, it would mean that we would deny approval for any amount of expenditures even though we have already found that some level of expenditures is necessary for the provision of reasonable and adequate service. Such a result would be counter to our very purpose.

Id. at 14.

A. Collection System Improvement Projects. CUII's proposed collection system improvement projects include upgrading Lift Stations B and C with increased capacity, constructing a new Lift Station D with increased capacity, constructing a force main from Lift Station B to Lift Station D, and constructing a force main from Lift Station D to the WWTP.

The evidence is undisputed that one of the major causes for surcharges in CUII's system is inflow. CUII's preapproval request in this case is based on the assertion that CUII is unable to remove more than 30% of the I&I in its system and that it must remove at least 60% of I&I to reduce the need for the CSIP. However, the evidence of record in this Cause identified several

areas within CUII's collection system that have significant wet weather peaking factors associated with inflow. For example, Mr. Holden provided credible testimony that these areas present opportunities for a successful I&I removal program to remove more than 30% of the clearwater flow. CUII did not present any contrary evidence that we found convincing on rebuttal.

We find that the evidence of record does not support CUII's request for preapproval of the CSIP. The evidence of record demonstrates that hundreds of thousands of gallons of I&I per day could potentially be removed if CUII addressed inflow in several specific locations identified by credible evidence presented by the OUCC and LOFS. It would be premature for the Commission to approve any CSIP when CUII has not yet attempted to remediate, at a minimum, the inflow locations identified by Mr. Holden and Mr. Parks.

In addition, approving CUII's CSIP would put the Commission's stamp of approval on CUII's failure to comply with the 44724 Order, in which we ordered it to "develop a comprehensive I&I program to decrease wastewater backups in homes and manhole overflows and to eliminate water inflow and ground water infiltration into Petitioner's wastewater collection system." We find that CUII should prioritize its I&I program so that we can assess the impact of the I&I removal on CUII's request for preapproval, rather than guess about what percentage of I&I could be removed, as it has done.

CUII has relied heavily on correspondence with IDEM to support its argument that the projects proposed in this Cause are needed immediately. However, CUII is not currently subject to any IDEM enforcement action, and, even though its system is approaching full capacity, the evidence of record demonstrates that CUII is currently able to provide reasonable service to its current customers. Future expansion of CUII's system will be extremely limited because its service area is almost entirely built out. Because we are unable to find, based on the evidence of record in this Cause, that any expenditure for CSIP is currently necessary for CUII to provide reasonable service to its customers, we deny CUII's request for preapproval of its proposed CSIP.

B. Wastewater Treatment Plant Projects. CUII's proposed WWTP improvement projects include an expansion to upgrade the capacity of the WWTP from 1.1 MGD to 1.6 MGD DAF by adding a new biological treatment process and improving the auxiliary processes and equipment to support the new biological treatment process.

The evidence of record establishes that CUII's existing 1.1 MGD capacity is sufficient to serve CUII's existing and potential future customers and does not support CUII's request to expand the WWTP's capacity to 1.6 MGD. CUII has argued that it needs to increase the WWTP capacity to 1.6 MGD to potentially serve 43 more homes within LOFS (approximately 13,000 GPD) and to treat an additional estimated 500,000 GPD of sanitary overflows not accounted for in the flow metering. However, according to Mr. Holden's testimony, CUII's overflow reports filed with IDEM indicate overflow levels that are far below 500,000 GPD (approximately 1,200 gallons per event). In addition, the OUCC presented credible evidence that issues exist with CUII's Parshall flume influent flow meter that could directly affect the size of WWTP expansion (if any) that CUII needs, and we give weight to this evidence. Thus, even ignoring I&I considerations, CUII has not demonstrated a need to expand the WWTP to 1.6 MGD.

As mentioned above, CUII's witnesses repeatedly cite correspondence from IDEM (with several IDEM letters attached to Mr. Carbonaro's testimony as Attachment SC-4) to support their argument that immediate expansion of the WWTP is necessary. The July 17, 2018 Sewer Ban Early Warning letter reads, in part, as follows:

> This letter serves as notice that, pursuant to [327 IAC] 4-1-3, a Sewer Ban Early Warning notice is being given to [CUII]. Rule 327 IAC 4-1-3 states that when a wastewater treatment plant has reached or is approaching 90% of its hydraulic or organic design capacity, the Commissioner (or the Commissioner's delegate) shall notify it that the imposition of a Sewer Connection Ban may be necessary.
>
> . . .
>
> The early warning notification is intended to alert the owners and operators of wastewater treatment systems to potential problems, and initiate a process for evaluation of existing conditions, plan for future solutions, and arrange for funding in case capital improvements are required.
>
> . . .
>
> [T]he rule which governs the overload condition of wastewater treatment facilities also contains a provision for the imposition of a ban on future wastewater connections. A sewer connection ban may be imposed if the excessive hydraulic and/or organic loading to the wastewater treatment plant continues, or the addition of wastewater from new sources is likely to result in the bypassing or the discharge of insufficiently treated sewage.

Petitioner's Exhibit 3, Attachment SC-4, at 11-12.

On February 14, 2020, IDEM sent a Status Reminder letter to CUII, stating, among other things:

> The Office of Water Quality has evaluated the [CUII] WWTP discharge records for the past year and finds that the chronic hydraulic overload condition that existed when the Sewer Ban Early Warning was issued still exists. This determination is based on a review of the reported effluent flow for the annual period of 2019 which shows that the annual average rate of discharge for this year was 91% respectively, based on the design flow of 1.1 mgd.
>
> . . . Although a sewer connection ban is not being issued at this time, your flow records indicate that your community could qualify for such at this time.

Id. at 24-25.

Both IDEM letters quoted above state that they are intended to "initiate a process for evaluation of existing conditions, plan for future solutions, and arrange for funding in case capital

improvements are required." CUII is not currently subject to any enforcement action or sewer ban action by IDEM.

As above, we find that CUII should prioritize its I&I program so that we can assess the impact of the I&I removal on any need to expand its WWTP. CUII is not subject to any enforcement action by IDEM, and we find that the current capacity of its WWTP, while approaching its limits, can provide reasonable service to its customers. While we certainly expect utilities to take warning letters and other regulatory correspondence seriously, in assessing whether projects should be preapproved, we must weigh whether a utility's proposed response to such correspondence is reasonable. In this case, the evidence of record does not demonstrate that CUII's proposed response to IDEM's correspondence—the projects proposed in this Cause—is reasonable in light of CUII's current situation and failure to work on I&I removal. For these reasons, we deny CUII's request for preapproval of its WWTP expansion in its entirety.

C. Regulatory Costs. CUII's preapproval request in its direct testimony includes capitalization of approximately $150,000 of legal fees associated with this proceeding that would allow CUII to earn a return "of" and "on" this amount. We agree with Mr. Corey that capitalization of regulatory costs is not appropriate. However, on rebuttal, CUII agreed to limit its request in any future case to similar dollar-for-dollar recovery in its next rate case. We agree with CUII that Commission precedent exists allowing for deferral of regulatory costs for subsequent recovery in a utility's next rate case. We find CUII's incurrence of such regulatory costs may be reasonable and may be included for consideration as O&M expenses in CUII's next rate case.

D. Conclusion. Because we find that CUII has failed to sufficiently justify the only complete proposal on which it presented evidence, we deny preapproval of CUII's proposed expenditures in their entirety.

We will not preapprove the projects CUII proposed in this Cause because we find that CUII has made no meaningful attempt to date to achieve I&I removal as set forth in the 44742 Order. A robust I&I removal program is long overdue and could alter and help better determine the identity and scale of the improvements needed, according to Mr. Parks's and Mr. Holden's testimony.

While the OUCC and LOFS indicated that they were agreeable to Commission preapproval of some, but not all, of CUII's Proposed Improvements, CUII's witnesses remained adamant on rebuttal that all of the Proposed Improvements were necessary and did not provide any alternate proposal. Wastewater treatment systems are designed to be one unit, collection system and treatment system, working in concert. We cannot approve a subset of projects without evidence demonstrating how those projects would impact CUII's total system. As such, the Commission declines to carve individual projects out of CUII's Proposed Improvements.

We note that, contrary to CUII's apparent misinterpretation of the 44724 Order, CUII is free to undertake the Proposed Improvements without preapproval. To do so would simply mean that these projects are not preapproved for inclusion in rate base in CUII's next rate case. However, CUII may also file a new request for preapproval following the guidance of this order.

As a final matter, we find that the quarterly meetings occurring pursuant to the 44724 Order should continue, and, given CUII's repeated citation to correspondence from IDEM, the Commission will invite IDEM representatives to participate in future meetings.

IT IS THEREFORE ORDERED BY THE INDIANA REGULATORY COMMISSION THAT:

1. CUII's request for preapproval of expenditures pursuant to Ind. Code § 8-1-2-23 is denied.

2. This Order shall be effective on and after the date of its issuance.

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

APPROVED: MAY 05 2021

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

Dana Kosco Digitally signed by Dana Kosco Date: 2021.05.05 10:12:31 -04'00'

Dana Kosco
Secretary of the Commission