

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF JACKSON COUNTY WATER)
UTILITY, INC., FOR AUTHORITY TO ISSUE) CAUSE NO. 45640
LONG TERM DEBT AND CHANGES TO ITS)
RATES, CHARGES, AND TARIFF)

OUCC'S PROPOSED ORDER

The Office of Utility Consumer Counselor ("OUCC"), by counsel, hereby submits its proposed order.

Respectfully submitted,

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR



Daniel M. Le Vay, Attorney No. 22184-49
Deputy Consumer Counselor
OFFICE OF UTILITY CONSUMER COUNSELOR
115 W. Washington St. Suite 1500 South
Indianapolis, IN 46204
Email: dlevay@oucc.in.gov
infomgt@oucc.in.gov

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF JACKSON COUNTY)	
WATER UTILITY, INC., FOR)	CAUSE NO. 45640
AUTHORITY TO ISSUE LONG TERM)	
DEBT AND CHANGES TO ITS RATES,)	APPROVED:
CHARGES AND TARIFF)	

PHASE 1 ORDER OF THE COMMISSION

Presiding Officers:

David E. Ziegner, Commissioner

Loraine L. Seyfried, Chief Administrative Law Judge

On November 5, 2021, Jackson County Water Utility, Inc. (“Petitioner”) filed its Verified Petition with the Indiana Utility Regulatory Commission (“Commission”) seeking authority to issue long term debt through a Phase 1 proceeding; and to change its rates, charges, and tariff through a Phase 2 proceeding. Petitioner prefiled its Phase 1 case-in-chief on November 5, 2021, consisting of the testimony and exhibits of Larry W. McIntosh, Lori A. Young, and Earl L. Ridlen III.

On December 6, 2021, in lieu of a prehearing conference Petitioner and the OUCC submitted a stipulation and agreement as to the procedural schedule. On December 7, 2021, the Commission issued a docket entry (“Dec. 7 Docket Entry”) establishing the procedural schedule and recognizing that Petitioner would request to change its rates and charges in Phase 2 of this proceeding.

On January 26, 2022, the Indiana Office of the Utility Consumer Counselor (“OUCC”) prefiled its Phase 1 case-in-chief consisting of the testimony and exhibits of Shawn Dellinger, James T. Parks, and Margaret A. Stull. On February 10, 2022, Petitioner prefiled the rebuttal testimony and exhibits of Larry W. McIntosh.

Pursuant to notice, the Commission held an evidentiary hearing in Phase 1 of this Cause on March 2, 2022, at 10:30 a.m. in Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Petitioner and the OUCC appeared and offered their respective prefiled testimony and exhibits, which were admitted into evidence without objection.

The Commission, having considered the evidence of record and the applicable law, now finds as follows:

1. Notice and Jurisdiction. Notice of the proceedings in this Cause was given and published by the Commission as required by law. Petitioner is a public utility as defined by Ind. Code § 8-1-2-1 and a not-for-profit utility as defined in Ind. Code § 8-1-2-125. Petitioner seeks Commission authority to issue long term debt in Phase 1 of this proceeding and, thereafter in Phase

2, to change its rates, charges, and tariff. Pursuant to Ind. Code § 8-1-2-78 and Ind. Code § 8-1-2-125, the Commission has jurisdiction over the Petitioner and the subject matter of this Cause.

2. Petitioner's Characteristics. Petitioner is a not-for-profit utility organized and existing under the laws of the State of Indiana. Petitioner provides water service to customers in both rural and municipal areas in Jackson, Jennings, Bartholomew, Brown, and Lawrence Counties, Indiana. Petition ¶¶ 1-2.

3. Existing Rates, Test Year, and Relief Requested. The Commission established Petitioner's current rates and charges by its Phase 2 Order issued on April 17, 2019, under Cause No. 44986. In its Verified Petition, Petitioner proposes to issue long term debt in an amount not to exceed \$4,300,000, for a period no greater than 35 years, at an average interest rate of 2.50% or less. Petition ¶ 4. To repay the long-term debt, Petitioner proposes to change its rates and charges in Phase 2 pursuant to the evidence offered in such phase. Petition ¶ 5. The test year for Phase 2 is the 12 months ending December 31, 2021, adjusted for changes that are fixed, known, measurable, and occurring within 12 months following the end of the test year. Petition ¶ 6.

4. Petitioner's Direct Evidence. Mr. McIntosh began his testimony by describing his experience with Petitioner and other utilities. Petitioner's Ex. 1 at 1-2. He stated Petitioner is proposing to replace very old mains within the Town of Brownstown ("Brownstown") which often contain lead and often need repair. *Id.* at 2. He explained the distribution mains used to transmit water from the water treatment plant within Brownstown are more than 100 years old. *Id.* at 3. He described the Board of Directors for Jackson County Water ("Board"), he said the Board members are elected by the customers; and are customers of Petitioner themselves. He further explained the Board was involved with the decisions that led to this filing. *Id.* at 3-4. He stated Petitioner is proposing to borrow funds for the project from the Indiana Finance Authority's ("IFA") State Revolving Fund ("SRF") and possibly from Jackson County through its American Rescue Plan Act funds ("ARPA"). *Id.* at 2. Finally, he testified that based on his experience, the project is reasonable, appropriately uses long term debt, and will reasonably increase Petitioner's customer base. *Id.* at 4.

Ms. Young described the current facilities owned and operated by Petitioner and the proposed improvements. Pet. Ex. 4 at 3-4. She testified the current estimated total cost is \$4,211,000. *Id.* at 4. She testified her and her firm are willing to advise the Commission and the OUCC of any material changes in the estimates reflected in the Preliminary Engineering Report ("PER") provided as Exhibit LAY-1, Pet. Ex. 4 at 4. Ms. Young stated the minimum expected useful life of the replacement water mains and the service lines referenced in the PER are 50 years. *Id.* at 5. She explained that the project is reasonable and necessary at this time and absent the Commission granting financing authority Petitioner cannot close on a loan from SRF or begin constructing these improvements. *Id.* She finally explained the SRF performs its own due diligence on proposed projects and Petitioner received approval from the SRF for this project on October 20, 2021, provided as Exhibit LAY-2, Pet. Ex. 4 at 5-6.

Mr. Ridlen provided testimony describing his firm's experience working with Petitioner and other similar utilities throughout the Midwest region. Pet. Ex. 3 at 1-2. He explained he performed an audit of Petitioner's financials for calendar year 2020 and that a portion of his audit is attached as exhibits to his testimony. *Id.* at 2. He explained why Petitioner is proposing to delay

an increase in rates and charges until Phase 2 and noted Petitioner has previously used a phased approach. *Id.* at 3-4. Mr. Ridlen described the basis Petitioner used to estimate the maximum amount to be borrowed, the maximum period for such borrowing, and the likely interest rate that will be established by the SRF at closing. *Id.* at 4-5. With respect to the interest rate, Mr. Ridlen recommended the maximum rate of 2.50% because he believes the interest rate charged by the SRF will not exceed 2% if Petitioner can close a loan with the SRF by early 2022. *Id.* at 5. He also stated interest rates could increase later in 2021 or early 2022 given current economic conditions. *Id.* He described the alternatives Petitioner considered prior to moving forward with the SRF as its source of funds and why the SRF funding is the most reasonable long term debt funding for the project. *Id.* at 6. Mr. Ridlen provided Exhibit D of Petitioner's Exhibit ELR-1 reflecting a potential amortization schedule for this new debt, and he explained that while Petitioner's current financial condition is sound, Petitioner cannot make these improvements unless it borrows the long-term debt as described in Phase 1. *Id.* at 7, 9. Finally, he offered that Petitioner would advise the Commission and the OUCC of the closing terms within 60 days of closing. *Id.* at 9.

5. OUCC's Evidence. Mr. Dellinger discussed his review of Petitioner's Phase 1 request. He indicated that the structure of the proposed borrowing is appropriate and in the public interest, but recommended Petitioner be authorized to borrow based on interest rates not to exceed 4.5% rather than the 2.5% requested. Public's Ex. 1 at 2-3. He recommended the amortization table provided in Exhibit D of Petitioner's Exhibit ELR-1 be modified to show two years of interest only payments and the remaining debt amortized over 33 years, rather than the 34 years Petitioner indicated. *Id.* at 3-4. He indicated that for the purpose of qualifying for financing authority requested, the OUCC accepted the projects identified in its case, but he recommended removing some of the contingency included in Petitioner's request resulting in a reduced debt authority of \$4,066,400. *Id.* at 4-5. He discussed the debt service reserve and recommended once the debt service reserve has been fully funded through rates, Petitioner's rates should be reduced to eliminate debt service reserve as a revenue requirement. *Id.* at 7. Mr. Dellinger noted that the precise interest rates, borrowed amount, and annual debt service will not be known until Petitioner's debt is issued but Petitioner's rates in Phase 2 should reflect the actual cost of the debt. Mr. Dellinger recommended the Commission require Petitioner to file a report within thirty (30) days of closing on its long-term debt issuance that discloses the terms of the new loan, including interest rates and the amount borrowed, the amount of debt service reserve and an itemized account of all issuance costs, including issuance costs actually incurred to that date. *Id.* at 7-8. He also recommended that any financing authority not used by Petitioner should expire 365 days after a final order has been issued in this Cause, that Petitioner's debt service reserve be placed in a restricted account, and that Petitioner be required to report to the Commission if Petitioner spends any funds from its debt service reserves for any reason other than to make the last payment on its current or proposed debt issuances. *Id.* at 8-9.

Mr. Parks explained his review of Petitioner's proposed project and stated the OUCC supports Petitioner's efforts to remove lead components from its system by replacing aged assets. Public's Ex. 2 at 2-4. Mr. Parks discussed his comparison of Petitioner's estimated cost to a 2018 competitively bid project in Fort Wayne. *Id.* at 6-7. He accepted the estimated construction costs but proposed a reduction of the contingency from Petitioner's 15% to the standard IFA 10%. *Id.* at 8, 11. Mr. Parks discussed specific aspects of Petitioner's water main replacement project and made recommendations. He stated Petitioner should evaluate the life cycle costs of alternate water main materials to include both PVC and ductile iron pipes. He stated that as part of bidding,

Petitioner should include mandatory deduct items and the pipe material alternatives (PVC or ductile iron) to establish upfront pricing during competitive bidding for review and inclusion in the project of ductile iron pipe if costs are within the budgeted amount. He further explained once design is completed, Petitioner should update its engineer's estimate based on construction starting in late 2022. *Id.* at 8-11, 13-14. He stated as an effective utility management practice, Petitioner should obtain easements for its replacement water mains, especially for those water mains along Brownstown's Streets that are likely to be widened under a road project by either the Indiana Department of Transportation, Jackson County, or the Town of Brownstown. *Id.* at 11, 13-14. Mr. Parks also discussed customer growth and future demand forecasts. *Id.* at 11-13. He recommended the Commission approve debt financing that includes the IFA allowed 10% construction contingency on all project components. *Id.* at 13.

Ms. Stull discussed her review of the rate increase calculation included in Petitioner's Exhibit C of Exhibit ELR-1. Public's Ex. 3 at 2-5. She testified the ultimate effect the authorized debt issuance will have on Petitioner's rates should be determined and addressed in Phase 2 of this proceeding. *Id.* at 6. She recommended the Commission authorize the financing authority Petitioner requested subject to the changes and conditions recommended by OUCC witnesses Shawn Dellinger and James Parks. *Id.*

6. Petitioner's Rebuttal Evidence. Mr. McIntosh testified on rebuttal that he disagreed with limiting borrowing authority to \$4,066,400. Pet. Ex. 2 at 1-2. He stated Petitioner's request includes a reasonable contingency to account for potential delays and cost increases associated not only with the ongoing COVID-19 pandemic, but also due to the volatile market for pipes and other materials. He added that to the extent there are remaining funds after the completion of the project, Petitioner will use such funds to address additional capital needs, just as Petitioner has with prior borrowings. *Id.* at 2, 6. He explained why he considered Mr. Parks' reduction of contingency to 10% is unreasonable. *Id.* at 6-7. Mr. McIntosh provided the IFA PER approval letter (Attachment LWM-2R), which includes the 15% contingency. He further explained Petitioner has experienced 20% to 160% increases in common materials (pipe, meter setters, brass fittings, saddles, hydrants, meter pits, meter pit rings/lids, etc.) used in the water utility industry since January 1, 2021. *Id.* at 6. He also addressed Mr. Parks' recommendation that Petitioner obtain easements for its replacement water mains. He stated petitioner considered numerous variable and associated cost of obtaining easements and Petitioner determined it was not feasible to place the new water mains as part of this project in an easement. *Id.* at 7.

He addressed Mr. Dillinger's recommendations regarding the debt service reserve and stated Petitioner has not included any revenue requirement in this Phase 1 filing and that the revenue requirement will be presented in Phase 2 of this proceeding. *Id.* at 2-3. He also explained why Mr. Dellinger's recommendation to reduce rates after the debt service reserve is fully funded is piecemeal ratemaking. He testified just as the Commission ordered in Phase 1 of Cause No. 44986, Petitioner would be willing to report with in sixty (60) days of closing the terms of the long-term debt and that the reporting would include terms of the new loan, interest rate, amount borrowed, and the amount of debt service reserve and an amortization schedule. He stated that the 2014 and 2018 SRF projects came in under budget and that the SRF allowed JCWU to amend the scope of the PER to allow additional projects to be funded he further explained the process for determining the additional projects. *Id.* at 4-5. He explained that the Commission did not require an interim report as to the use of excess funds after approving financing authority for the previous

two SRF loans. *Id.* at 5.

Mr. McIntosh testified he agreed with Ms. Stull's recommendation that the Commission make no finding with respect to petitioner's revenue requirements for total debt service expense in Phase 1 because petitioner is not seeking or asking for a determination on any revenue requirement during this phase. *Id.* at 6.

He recommended the Commission grant Petitioner authority to incur long term indebtedness not to exceed \$4,300,000 for a period of no more than 35 years at an average interest rate not to exceed 4.5%, order Petitioner to file under this Cause information on the actual terms of such long-term debt up to 60 days following the closing of such debt, and grant Petitioner authority to seek a Phase 2 increase in rates and charges. *Id.* at 7.

7. Commission Discussion and Findings. As described in the Verified Petition and recognized by the Commission's December 7, 2021 Docket Entry, this proceeding has been divided into two phases. Phase 1 is focused solely on Petitioner's request to issue new long-term debt through the SRF. Phase 2, to adjust Petitioner's rates and charges, is anticipated to be filed later this year based on a test year of December 31, 2021, adjusted for fixed, known, and measurable changes. The OUCC consented to this approach. Petitioner has used this phased approach previously and the Commission finds it reasonable. While the implementation of rates incorporating debt service and debt service reserve as a revenue requirement, the OUCC asked us to require a filing by Petitioner within 30 days of the closing on the debt disclosing the terms of the borrowing such as the interest rate, the amount borrowed, the amount needed for debt service reserve and itemization of issuance costs. Petitioner was opposed to providing that report within 30 days, and instead indicated it was willing to report the terms of the long-term debt, the interest rate, the amount borrowed, the amount of debt service reserve and an amortization schedule within 60 days of closing. It is unclear why Petitioner would require more than 30 days to report the basic terms of its long-term debt. Nonetheless, we find that Petitioner should make its report within 60 days of closing. However, if the closing occurs before Petitioner has filed its Phase 2 evidence, Petitioner should provide that information in its Phase 2 case. If the closing occurs after Petitioner has filed its Phase 2 case, Petitioner should provide that information within ten (10) days of closing. The evidence of record indicates the purpose of the long-term debt is to replace aging water mains and related components containing lead in Petitioner's service area. The evidence described in detail the infrastructure to be replaced and the estimated costs. The evidence further described the authority requested for long term debt explaining the maximum amount, the maximum term of years, and the maximum average interest rate that Petitioner seeks. The evidence also reflects a potential amortization of this long-term debt and references Petitioner's current outstanding debt used to construct prior facilities. OUCC witness Mr. Parks encouraged the project because it would eliminate lead components including lead joints, lead goosenecks, and service lines from its system. The OUCC did not oppose the Commission granting financing authority in this Phase 1 proceeding for the projects it identified in its case-in-chief.

We next address the issue of the amount of borrowing that should be permitted. Petitioner's borrowing request assumes a 15% contingency over its own estimated cost. In addition, through rounding, Petitioner's requested authority includes an additional \$89,000, which is effectively adds a 3% contingency for a total contingency of 18%. The OUCC pointed out that using a 10% contingency and eliminating the rounding would result in a borrowing of \$4,066,400.

In its rebuttal case, Petitioner's rebuttal witness provided an email from a representative of the Indiana Finance Authority ("IFA") attaching the Drinking Water State Revolving Fund (SRF) approval of Jackson County's Preliminary Engineering Report (PER). The email noted "the approval includes the replacement of approximately 12,000 lineal feet of 6-inch through 16-inch diameter water main and appurtenances, including 160 lead service lines." The email declared that "financing for this project will come from a future Drinking Water SRF Loan." The letter makes no specific reference to Petitioner's contingency. It is impossible from this small amount of information to determine whether IFA has departed from its general policy of allowing a 10% contingency on its borrowings as opposed to a higher percentage. In any case, this Commission performs a different function than IFA. Protecting the affordability of rates is particularly the province of this Commission. We are guided by IC 8-1-2-0.5, which establishes that "the continuing policy of the state is to use all practical means and measures . . . in a manner calculated to create and maintain conditions under which utilities plan for and invest in infrastructure while protecting the affordability of utility services for present and future generations of Indiana citizens." (Emphasis added.)

Petitioner's request for financing authority of \$4.3 million is substantially more than its own estimate of construction costs. Yet Petitioner made it clear in its rebuttal case that it plans to borrow the whole amount authorized even if its costs conform to its engineer's lower cost estimates resulting in no corresponding rate reduction. Mr. MacIntosh testified that, to the extent there are remaining funds after the completion of the project, Petitioner will use such funds to address additional capital needs, as Petitioner has with prior borrowings. Mr. MacIntosh stated briefly that JCWU has identified ten pre-1960 hydrants in Brownstown that are hard to open and close, and parts are hard to obtain. He also stated there are some areas in Brownstown where looping water mains would be beneficial. (McIntosh Rebuttal Testimony, p. R5.)

There are at least two problems with Mr. McIntosh's plan to use extra funds. The first is that his rebuttal testimony is not truly a plan. Rather, it is a very brief recitation of need without any support or cost estimates or assurances that the extra funds will necessarily be spent addressing those particular needs. The second problem is that, if this testimony could be called a plan, it should have been presented in Petitioner's case-in-chief. Prioritizing projects that may be completed in the event of unused funds is a rational approach. But that approach calls for the utility to declare how it will use its available funds in its case-in-chief.

To be consistent with state policy, our orders should "calculated to create and maintain conditions under which utilities plan for and invest in infrastructure while protecting the affordability of utility services for present and future generations of Indiana citizens." IC 8-1-2-0.5 calls upon us to weigh planning and investment in infrastructure against the short term and long-term effect on rates. We evaluate these factors in financing cases with evidence addressing what projects a utility intends to complete, why those projects are reasonably necessary, and what those projects should be estimated to cost for purposes of authorizing the terms of financing.

Ind. Code § 8-1-2-78 authorizes the issuance of long-term debt to the extent required to provide sufficient funds for the construction, completion, extension, or improvement of facilities. And before approving such long-term debt we are made aware in a petitioner's case-in-chief what facilities are being constructed, completed, extended, or improved. If Petitioner's actual costs equal its own pre-rounding estimates, it will have more than approximately \$500,000 of borrowed

funds to spend on projects such as those alluded to for the first time in three short sentences in its rebuttal case. (McIntosh Rebuttal, p. 5R.) It makes little sense that Petitioner must evidence its project for review to justify its financing, but it need not evidence in the same manner the projects on which it would spend any remaining borrowed funds.

There are two situations that make high contingencies used for financing more acceptable. The first is a mechanism that will allow the borrowing and subsequent rates to be based on the actual construction costs or the bids received. That is not the proposal in this case. The other mechanism is use of any excess borrowed funds on projects presented in the utility's case in chief and identified as projects on which the excess funds will be applied. In this manner, this Commission will be furthering the state's continuing policy of promoting the planning and investment in necessary infrastructure as well as protecting the affordability of utility services. We also note that IC 8-1-2-23 directs this Commission to keep itself informed of all new construction, extensions and additions to the property of public utilities. We expect Petitioner to conform to this practice in its future financing cases.

In light of the fact that Petitioner remains before us in Phase 2 of this proceeding and therefore we will have an opportunity to be informed about what projects Petitioner will complete with any excess funds, we find Petitioner should be permitted to borrow long-term debt in an amount not to exceed \$4,300,000 at a term of no more than 35 years at an average interest rate not to exceed 4.5%. Notwithstanding, our granting of the authority requested in this Cause, we expect Petitioner's financing case to identify in its case-in-chief those projects it would complete in the event of excess funds. The Commission agrees with the amount and term of the debt but, as in previous authorizations, we impress upon Petitioner the urgency of closing on financing with the SRF as early as possible in 2022 given the potential for interest rate increases, as discussed by Petitioner's witness Mr. Ridlen. Further, as requested by Petitioner, we acknowledge that a Phase 2 proceeding will be held following this Phase 1 Order, wherein Petitioner's revenue requirement, including necessary funds for debt service and debt service reserve, will be established.

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

1. Petitioner is authorized to incur additional long-term indebtedness not to exceed \$4,300,000 for a period of no more than 35 years at an average interest rate not to exceed 4.5%.
2. Petitioner shall file under this Cause information on the actual terms of such long-term debt within 60 days following the closing on such debt.
3. Petitioner is hereby authorized to seek a Phase 2 increase in its rates and charges by filing additional evidence based upon a test year of December 31, 2021, as adjusted for fixed, known, and measurable changes that will occur within 12 months of the end of such test year. Petitioner shall coordinate with the OUCC regarding a proposed procedural schedule to be used for the Phase 2 proceeding. Petitioner shall file the proposed procedural schedule with the Commission on or before April 11, 2022. If the Parties are unable to agree to scheduling matters, the Parties shall so advise the Commission.
4. This order shall be effective on or after the date of its approval.

HUSTON, FREEMAN, KREVDA, OBER AND ZIEGNER CONCUR:

APPROVED:

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

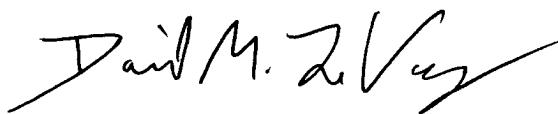
**Dana Kosco
Secretary of the Commission**

DMS 22043119v1

CERTIFICATE OF SERVICE

This is to certify that a copy of the *OUCC's Proposed Order* has been served upon the following counsel of record in the captioned proceeding by electronic service on March 28, 2022.

L. Parvin Price
Jeffrey M. Peabody
BARNES & THORNBURG LLP
11 S. Meridian Street
Indianapolis, IN 46204
Email: parvin.price@btlaw.com
jeffrey.peabody@btlaw.com



Daniel M. Le Vay
Deputy Consumer Counselor

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR
115 West Washington Street
Suite 1500 South
Indianapolis, IN 46204
infomgt@oucc.in.gov
317/232-2494 – Phone
317/232-5923 – Facsimile