

ORIGINAL

Commissioner	Yes	No	Not Participating
Huston	√		
Bennett	√		
Freeman	√		
Veleta			√
Ziegner	√		

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

**REQUEST OF THE CITY OF EVANSVILLE,)
INDIANA TO: (1) ADDRESS ISSUES)
ASSOCIATED WITH ITS DEBT TRUE-UP)
REPORT AND THE POTENTIAL IMPACT OF)
CURRENT MARKET CONDITIONS ON)
OVERALL CAPITAL PROJECT COSTS; AND (2))
AUTHORITY TO INCREASE ITS RATES AND)
CHARGES FOR WATER SERVICE PURSUANT)
TO THE TRUE-UP MECHANISM APPROVED IN)
CAUSE NO. 45545 IN THE EVENT FINANCING)
AUTHORITY IS INCREASED.)**

CAUSE NO. 45545 S1

APPROVED: AUG 21 2024

ORDER OF THE COMMISSION

Presiding Officers:

David E. Ziegner, Commissioner

Loraine L. Seyfried, Chief Administrative Law Judge

On March 2, 2022, the Indiana Utility Regulatory Commission (“Commission”) issued an order in Cause No. 45545 (“45545 Order”) authorizing the City of Evansville, Indiana (“Petitioner” or “Evansville”) to implement new water rates and charges, issue bonds or other obligations to finance capital infrastructure improvements, primarily for a new Water Treatment Plant Project (“WTP Project”), and file true-up reports with the Commission for any debt issued.

Evansville filed its first true-up report (“True-Up Report”) on July 8, 2022 in connection with the issuance of its Waterworks District Revenue Bonds, Series 2022A (“2022 Bonds”). The Office of Utility Consumer Counselor (“OUCC”) filed an objection to Petitioner’s True-Up Report on August 5, 2022. On August 19, 2022, Evansville filed its Response to the OUCC’s Objection to Petitioner’s Debt True-Up Report and Request for Subdocket requesting the Commission establish a subdocket in this proceeding to allow Petitioner and the OUCC to submit additional evidence regarding the issuance of the 2022 Bonds and the potential impact of current market conditions on Evansville’s overall project costs. The Commission issued a Docket Entry on August 24, 2022 establishing this subdocket proceeding.

On September 23, 2022, Evansville filed its direct subdocket testimony. On November 18, 2022, the OUCC filed its case-in-chief. On December 5, 2022, Evansville filed its rebuttal testimony and exhibits.

On January 10, 2023, Evansville filed a Motion to Stay the Proceedings and Vacate Evidentiary Hearing requesting that the Commission: (1) stay the proceedings in this subdocket proceeding until Evansville either: (i) filed the Guaranteed Energy Savings Contract to be entered into with Kokosing Industrial, Inc., or (ii) filed notice that it will be seeking competitive bids to

construct the WTP Project, and (2) vacate the evidentiary hearing in this proceeding. The OUCC filed its Response on January 11, 2023, indicating it did not object to Evansville's Motion to Stay the proceeding. On January 12, 2023, the Commission issued a Docket Entry wherein the Presiding Officers granted Petitioner's request to stay the proceeding.

On April 3, 2023, Petitioner filed its Submission of Status Report and Request for an Attorneys Conference in which Petitioner notified the Commission that Petitioner received information from AECOM, its design consulting engineer, on March 31, 2023, indicating the final cost estimate for the WTP Project was coming in significantly higher than what AECOM had previously communicated and significantly higher than the amount anticipated. Given this information, Petitioner informed the Commission it did not believe the originally contemplated timeline for re-commencing this case could be accomplished. Petitioner requested an attorneys conference to allow the parties to discuss the information and to allow the Commission to determine next steps. Based on the discussions in the attorneys conference, the Commission issued a Docket Entry on April 13, 2023 staying the proceedings pending further request by Petitioner.

On October 16, 2023, the Commission issued a Docket Entry wherein the parties were requested to provide a status update and proposed timeline for resolving this case. Evansville filed its Response to the Commission's Docket Entry on October 30, 2023, informing the Commission that given the new cost information provided by AECOM, Petitioner made the decision to postpone final engineering and construction on the WTP Project and to evaluate different alternatives for addressing the challenges at the treatment plant. Petitioner requested that the Commission convene an attorneys conference to allow Petitioner to provide more detail regarding the status of the project, the options being considered, and Petitioner's proposed next steps and timeline. An attorneys conference was held on November 21, 2023.

On January 25, 2024, Petitioner filed new direct testimony and exhibits. Subsequent thereto, on February 13, 2024, Petitioner filed its Request to Lift Stay and Submission of Agreed Procedural Schedule formally requesting the Commission to lift the stay in this proceeding. The Presiding Officers lifted the stay and established a new procedural schedule in this Cause in a February 20, 2024 Docket Entry.

On May 2, 2024, the OUCC filed its case-in-chief testimony and exhibits. On May 30, 2024, Petitioner filed its rebuttal testimony and exhibits.

On June 14, 2024, Petitioner filed a Notice of Settlement and Request for Modification of Procedural Schedule notifying the Commission that the parties had reached an agreement in principle with respect to all issues in this Cause and requesting a modification to the procedural schedule. In a June 17, 2024 Docket Entry, the Presiding Officers granted Petitioner's motion.

On June 18, 2024, Petitioner filed public and confidential versions of a Stipulation and Settlement Agreement ("Settlement Agreement") between Petitioner and the OUCC with respect to all issues raised in this Cause. On June 20, 2024, Petitioner and the OUCC filed their respective settlement testimony.

The Commission held a settlement hearing at 1:30 p.m. on July 9, 2024, in Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. At the hearing, the parties' evidence, including the Settlement Agreement and supporting testimony, was admitted into the record without objection.

Having considered the evidence and applicable law, the Commission finds:

1. Notice and Jurisdiction. Due, legal, and timely notice of the hearings conducted in this Cause was given as required by law. Evansville is a municipally owned utility as defined by Ind. Code § 8-1-2-1(h). Under Ind. Code § 8-1.5-3-8(f)(2) the Commission has jurisdiction over changes to Evansville's water utility rates and charges. Further, the Commission has jurisdiction under Ind. Code 8-1.5-2-19 to approve issuances of long-term debt. Thus, this Commission has jurisdiction over Evansville and the subject matter of this proceeding.

2. Petitioner's Characteristics. Petitioner owns and operates a municipal waterworks and related facilities providing water sales and service to customers in and near the City of Evansville, Indiana. Petitioner also sells water to certain other water utilities.

3. Requested Relief. Through the Settlement Agreement, Evansville requests approval of additional financing authority above that approved in the 45545 Order for its revised WTP Project and procedures for addressing the utility's overcollection of debt service and debt service reserve.

4. Evansville's Direct Evidence. Mr. Shawn R. Wright, Director of Planning for the Evansville Water and Sewer Utility, provided an update on the WTP Project and explained that Evansville had engaged three new consulting partners—Clark Dietz, Black & Veatch, and Arcadis—to assist Evansville in finding a new path forward with respect to its WTP Project. Mr. Wright explained that with the help of these partners, Evansville developed a “Hybrid Solution” to the proposed WTP Project, consisting of both building new production assets on the new site, as well as building new assets on rehabilitated portions of Evansville's existing treatment plant.

Andrea W. Bretl, Manager of Central Illinois Operations for Clark Dietz, explained the role Clark Dietz played in the development of the Hybrid Solution. Ms. Bretl described the Hybrid Solution and how it differed from the originally contemplated WTP Project design. She testified that the Hybrid Solution is a reasonable alternative to building an entirely new plant as it will rehabilitate and rebuild plant components more cost-effectively.

Mr. Douglas L. Baldessari, CPA, Baker Tilly Municipal Advisors, LLC, testified that due to the increased estimated project costs since the 45545 Order and to finance the proposed Hybrid Solution, Petitioner is requesting additional financing authority to issue bonds, notes, or other evidence of indebtedness above what was approved in the 45545 Order in the amount of \$46,788,000, not to exceed total financing authority of \$271,850,000. Mr. Baldessari explained the \$271,850,000 includes both the increased costs for the water treatment plant, the repurposing of funds originally designated for road relocation projects and the City Garage, as well as the residuals management facility. He further explained the total includes \$7,300,000 of authorization to fund lead service line replacement projects financed through the Indiana Financing Authority's

State Revolving Fund Loan Program, with \$4,000,000 financed through a forgivable bond anticipation note and the remaining \$3,300,000 funded through revenue bonds amortized over 35 years at a 0% interest rate. Mr. Baldessari explained that, with the passage of House Enrolled Act 1316 (2023)¹ during the 2023 Legislative Session, Petitioner believes approval of such lead service financing is not required by the Commission; but if such approval is required, he said Petitioner is seeking approval for \$7,300,000 of authorization related to the lead service line replacement projects.

Based on the additional finance authority requested, Mr. Baldessari explained that through the true-up report process the Phase III, Phase IV, and Phase V increases in rates would be set to a level that provides funds for the actual debt service and debt service reserve requirements on the 2024A and 2024B bonds. Mr. Baldessari provided a table of what the final rates could look like based on the updated cost estimates and current interest rate assumptions.

	Incremental Increases Approved in Cause No. 45545	Estimated Incremental Increases (Attachment DLB-1)
Phase I	5.03%	4.42%
Phase II	5.62%	5.65%
Phase III	6.02%	5.99%
Phase IV	5.33%	11.61%
Phase V	4.10%	13.25%

5. OUCC’s Responsive Evidence. Scott A. Bell, Director of the OUCC’s Water/Wastewater Division, testified that the OUCC generally recommended approval of Petitioner’s requested financing authority with certain specific conditions. Mr. Bell specifically recommended the Commission authorize Petitioner’s requested financing authority with the condition that Evansville use the procedures outlined in Ind. Code. § 36-1-12-4 (Public Works Projects) to choose the contractor to construct the treatment plant.

James T. Parks, Senior Utility Analyst in the OUCC’s Water/Wastewater Division, recommended Petitioner evaluate whether the third set of South Plant clarifiers, originally approved and funded in 2007, would be necessary to achieve the 50 million gallons per day (“MGD”) firm capacity. He also recommended the Commission condition Petitioner’s requested financing authority on Petitioner rehabilitating and reusing the existing South Plant Filter building and Filters 21-28 for continued filtration in the same configuration now in use and that Petitioner reduce the number of new filters from the proposed 14 filters to eight filters, such that the rated capacity for all 16 filters (existing Filters 21-28 plus eight new filters) would then be 48 MGD and the firm capacity (with one filter out of service) would be 45 MGD. Additionally, Mr. Parks recommended that Evansville explain its decision to pursue the Hybrid Solution instead of

¹ Ind. Code § 5-1.2-4-31

installing a new water treatment plant and that Petitioner's financing approval be conditioned on Evansville developing a long-term plan for expansions, upgrades, and additions to the water treatment plant.

Shawn Dellinger, Senior Utility Analyst in the OUCC's Water/Wastewater Division, recommended Petitioner's proposed additional financing authority of \$212 million be approved. He recommended a number of true-up procedures related to the debt issuance, as well as other requirements primarily to address the overcollection of revenues associated with Evansville's delay in issuing the bonds approved in the 45545 Order. With respect to the reoffering premium issue which ultimately led to the creation of this subdocket, Mr. Dellinger testified the determination of whether the reoffering premium is appropriately considered debt is moot because this subdocket is focused on the additional debt that is required rather than determining that additional borrowing authority is required. He further testified regarding the impact on customer rates of the additional cost for the WTP Project and the issue with Evansville's unspent funds from previous bond issuances.

6. Petitioner's Rebuttal Evidence. Mr. Wright explained why he disagreed with the OUCC's recommendation that Petitioner's financing authority be conditioned on Evansville publicly bidding the project under Ind. Code. § 36-1-12-4. He also responded to each of Mr. Parks' engineering recommendations with respect to the proposed WTP Project design, and he explained why Petitioner did not believe the recommendations were appropriate. He also explained that construction of a new treatment plant is not an affordable option for Evansville or its customers. With respect to Mr. Parks' recommendation that Evansville's financing authority be conditioned on Petitioner developing a long-term master plan, Mr. Wright testified Petitioner agreed that a long-term master plan of the site would be beneficial for the utility, and Evansville had already instructed its design partners to develop such a plan.

Mr. Baldessari testified that Petitioner accepted the OUCC's proposed true-up recommendations, as well as its recommendations to address the overcollection of debt service and debt service reserve revenues. He clarified, however, that the collection of funds in Phase III for debt service is \$178,765.66, and not the \$170,599 as stated in Mr. Dellinger's testimony. Further, Mr. Baldessari testified he agreed with Mr. Dellinger that the reoffering issue is moot and the Commission does not need to address the issue in this case.

7. Settlement Agreement and Supporting Evidence. The Settlement Agreement, a copy of which is incorporated herein, presents the parties' resolution of all issues in this Cause. The witnesses offering settlement testimony described the Settlement Agreement as a fair and reasonable resolution of the issues in this Cause.

Evansville witness Wright testified that, taken as a whole, the Settlement Agreement represents the result of extensive, good faith, arm's-length negotiations reflecting a fair and balanced outcome of the sub-docket issues reached between the parties. OUCC witness Bell testified the Settlement Agreement represents a compromise reached in the settlement negotiation process, with give and take by both parties. He further testified the parties devoted considerable time and effort to evaluate the various settlement proposals, which ultimately resulted in an agreement that affords Evansville the debt authority it requires and Evansville's customers the

benefit of positions advocated by the OUCC. Both Messrs. Wright and Bell testified the Settlement Agreement is in the public interest and should be approved.

A. Financing Authority and Public Bidding Requirements. Evansville witness Wright stated that as a result of changing market conditions and after further project development and re-design, Petitioner requested total bonding authority of \$271,850,000 in this proceeding and planned to procure the WTP Project either by publicly bidding the project or by entering into a Guaranteed Energy Savings Contract. In contrast, he noted OUCC witness Bell recommended the Commission authorize Petitioner's requested financing authority with the condition that Evansville publicly bid the WTP Project following the procedures outlined in Ind. Code. § 36-1-12-4 to increase the likelihood of Evansville securing lower construction costs.

The Settlement Agreement reflects the parties' compromise with respect to the financing authority issues in this Cause. For purposes of settlement, the parties stipulated that the total authorized financing authority approved in this proceeding shall be increased to \$271,850,000, which includes \$258,000,000 in estimated construction costs and reasonable design, inspection, and non-construction costs associated with the Hybrid Solution to the WTP Project. This amount also includes \$7,300,000 for lead service line replacements, which is to be included in the total authorization to the extent the Commission determines such approval is necessary.

The Settlement Agreement requires Petitioner to publicly bid the WTP Project pursuant to the competitive open bidding procedures outlined in Ind. Code ch. 36-1-12 and the terms of Paragraph 2.b. of the Settlement Agreement. In the event the total awarded bid amount for construction costs related to the WTP Project exceeds a specified amount without change of project scope, and this causes the total financing authority calculated under Paragraph 2.a. to exceed \$271,850,000, the Settling Parties agree Petitioner should be permitted to secure from the Commission the necessary increase to its requested borrowing authority without opposition from the OUCC up to a threshold defined in the Settlement Agreement. If the bids received are higher than the threshold, nothing in the Settlement Agreement prohibits Petitioner from seeking additional borrowing authority or limits the right of the OUCC to oppose that additional borrowing authority request or to otherwise take the position that Petitioner should not proceed with the WTP Project. For purposes of the application of this provision in the Settlement Agreement, Petitioner agrees the awarded bid shall not expand the scope of the project or deviate from the project most recently presented in this case.

B. Overcollection of Revenues. The Settlement Agreement reflects the parties' agreement with respect to the overcollection requirements applicable to the proposed bonds. As explained in Mr. Wright's settlement testimony, Petitioner agreed to the OUCC's recommendations with respect to the overcollection of revenues, and the parties' agreement on these issues is reflected in Paragraph 2.c. of the Settlement Agreement.

For purposes of settlement, Petitioner agreed to address the overcollection of debt service and debt service reserve funds due to the delay in issuing the bonds authorized in the 45545 Order by placing certain funds into a separate account pursuant to the terms outlined in Paragraph 2.c. of the Settlement Agreement. Beginning with the implementation of the tariff for Phase III, Petitioner will place \$178,765.66 per month on an ongoing basis into a separate account until the debt is

issued. To address ongoing overcollection of debt service reserve, beginning with the implementation of the tariff for Phase III, Petitioner will place \$75,689.67 per month in a separate account on an ongoing basis until the debt is issued. Further, to address the overcollection of debt service reserve in Phases 1 and 2, Petitioner will place \$1,135,345 into the same separate account before funds to be authorized pursuant to the Settlement Agreement are borrowed. Petitioner further agreed that all funds in the account set up for the overcollection of revenues will be used to prepare the debt service reserve when the proposed bonds are closed.

C. True-Up Procedures. The parties' agreement with respect to the true-up procedures applicable to the proposed bonds is reflected in Paragraph 2.d. of the Settlement Agreement. As explained in Mr. Wright's settlement testimony, Petitioner agreed to the OUCC's recommended true-up procedures.

As set forth in Paragraph 2.d. of the Settlement Agreement, Petitioner agrees at the time of debt issuance to true-up rates to reflect debt service costs pursuant to the true-up process established in the 45545 Order. Petitioner further agreed to true-up rates to reflect debt service costs at the time Phase V rates are implemented (approximately March 2026), pursuant to the true-up process set forth in the 45545 Order. Additionally, Petitioner agreed to true-up rates again to reflect debt service costs at the time of the final payment for the WTP Project (approximately October 2027), pursuant to the true-up process set forth in the 45545 Order. Petitioner further agreed that any overcollection or undercollection of debt service funds shall be set aside and the disposition of such funds will be addressed in Petitioner's next rate case.

D. Other Settlement Terms. For purposes of settlement, Petitioner agreed to develop a long-term master plan as recommended by OUCC witness Parks. Paragraph 3 of the Settlement Agreement provides that Petitioner will develop a master plan to accommodate orderly expansions, upgrades, and additions to the treatment plant that are anticipated to be needed in the future. The plan shall include a hydraulic profile. Petitioner agreed that such plan should identify and size these treatment processes and reserve space for these future improvements. Petitioner further agreed to complete the master plan by September 30, 2025. Finally, Petitioner agreed to create a future site plan or layout identifying all existing and future treatment processes and structures, and it further agreed that such future site plan also identify and locate all buried process piping and utilities serving the water treatment plant.

8. Commission Discussion and Findings. Settlements presented to the Commission are not ordinary contracts between private parties. *U.S. Gypsum, Inc. v. Ind. Gas Co.*, 735 N.E.2d 790, 803 (Ind. 2000). When the Commission approves a settlement, that settlement "loses its status as a strictly private contract and takes on a public interest gloss." *Id.* (quoting *Citizens Action Coal. of Ind., Inc. v. PSI Energy, Inc.*, 664 N.E.2d 401, 406 (Ind. Ct. App. 1996)). Thus, the Commission "may not accept a settlement merely because the private parties are satisfied; rather [the Commission] must consider whether the public interest will be served by accepting the settlement." *Citizens Action Coal.*, 664 N.E.2d at 406.

Further, any Commission decision, ruling, or order, including the approval of a settlement, must be supported by specific findings of fact and sufficient evidence. *U.S. Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coal. of Ind., Inc. v. Pub. Serv. Co. of Ind., Inc.*, 582 N.E.2d 330,

331 (Ind. 1991)). The Commission's own procedural rules require that settlements be supported by probative evidence. 170 IAC 1-1.1-17(d). Therefore, before the Commission can approve the Settlement Agreement, we must determine whether the evidence in this Cause sufficiently supports the conclusions that the Settlement Agreement is reasonable, just, and consistent with the purpose of Ind. Code ch. 8-1-2, and that such agreement serves the public interest.

The Commission has before it substantial evidence from which to determine the reasonableness of the terms of the Settlement Agreement. Our review of the reasonableness of the Settlement Agreement is aided by the parties' supporting settlement testimony, which provides an explanation of the components underlying the additional financing authority agreed upon by the parties. Based on our review, we find the increased financing authority is reasonable for purposes of settlement and supported by the evidence of record. Further, the parties' supporting testimony supports the true-up procedures and overcollection requirements the parties have agreed to for purposes of the proposed financing, and we also find these terms reasonable and supported by the evidence of record.

Aside from the additional costs associated Petitioner's WTP Project, there are two issues underlying Petitioner's additional financing authority request that were addressed in the parties' case-in-chief and rebuttal testimonies. The first issue is related to the reoffering premium and whether such premium should be considered as debt and count against Petitioner's debt reauthorization. Both parties agreed that this issue is moot. OUCC Ex. 5 at 13; Pet. Ex. 4 at 6-7. The parties agreed that the Settlement Agreement resolves all issues in this subdocket, which includes the premium issue, and the Settlement Agreement included no statement as to that issue. Given the parties' agreement and the requested change in financing approval since the 45545 Order, we agree this issue is moot.

The second issue is whether Commission approval is required for the \$7,300,000 in lead service line replacement projects financed through Indiana Financing Authority's State Revolving Fund Loan Program. The Settlement Agreement does not reflect the parties' collective viewpoint on whether Commission approval of the \$7,300,000 should be required, but it does reflect the parties' overall agreement that Petitioner's total financing authority should be increased to \$271,850,000, subject to the terms set forth in Paragraphs 2.a. and 2.b. of the Settlement Agreement. Given the parties' agreement that Petitioner's financing authority should include the \$7,300,000 for lead service line replacement, we consider this issue in the context of the overall reasonableness of the Settlement Agreement and need not specifically address whether Commission approval of such financing is required.

Based on the evidence presented, we find the Settlement Agreement is a reasonable compromise between the parties' positions and is in the public interest. The Settlement Agreement provides Evansville sufficient borrowing authority to construct the proposed Hybrid Solution to the WTP Project, while also providing Evansville's customers the benefit of positions advocated by the OUCC in this proceeding. In addition, the Settlement Agreement provides for the development of a master plan, which if properly maintained and utilized, will guide Petitioner's future planning and expansion efforts at the treatment plant site.

Accordingly, we approve the Settlement Agreement. Petitioner is authorized to increase its total financing authority above what was authorized in the 45545 Order to \$271,850,000, which includes the \$7,300,000 in lead service line replacement financing. Petitioner shall adhere to the terms of the Settlement Agreement, including the procedures for addressing the overcollection of funds, the process to true-up rates, and the preparation of a long-term master plan.

9. Effect of Settlement Agreement. Consistent with the parties' agreement, the Settlement Agreement is not to be used as precedent in any other proceeding or for any other purpose except to the extent necessary to implement or enforce its terms; consequently, with regard to future citation of the Settlement Agreement or this Order, we find our approval herein should be treated in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434 (IURC March 19, 1997).

10. Confidentiality. On March 13, 2023, Petitioner filed a Motion for Protection and Nondisclosure of Confidential and Proprietary Information in this Cause, which was supported by an affidavit showing that certain information to be submitted to the Commission was trade secret information as defined in Ind. Code § 24-2-3-2 and should be treated as confidential in accordance with Ind. Code §§ 5-14-3-4 and 8-1-2-29. In a Docket Entry dated March 15, 2023, the Presiding Officers found the information should be held confidential on a preliminary basis. After review of the information and consideration of the affidavit, we find the information is trade secret information as defined in Ind. Code § 24-2-3-2, is exempt from public access and disclosure pursuant to Ind. Code §§ 5-14-3-4 and 8-1-2-29, and shall be held as confidential and protected from public access and disclosure by the Commission.

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

1. The Settlement Agreement, a public version of which is attached to this Order, is approved.
2. Petitioner is authorized to increase its total financing authority above what was authorized in Cause No. 45545 to \$271,850,000, which amount includes \$7,300,000 in lead service line financing. Petitioner is therefore granted a Certificate of Authority to issue additional long-term debt in principal amount not to exceed \$46,788,000 as approved in this Order.
3. Petitioner shall publicly bid its WTP Project using the procedures set forth in Ind. Code § 36-1-12-4 and pursuant to Paragraph 2.b. of the Settlement Agreement.
4. Petitioner shall address the overcollection of debt service and the debt service reserve by following the procedures outlined in Paragraph 2.c. of the Settlement Agreement.
5. Petitioner shall file true-up reports as provided in Paragraph 2.d. of the Settlement Agreement.

6. Petitioner shall develop a long-term master plan by September 30, 2025 as provided in Paragraph 3 of the Settlement Agreement and file a notice under this Cause when the plan has been developed.

7. In accordance with Ind. Code § 8-1-2-70, Petitioner shall pay the following itemized charges within 20 days from the date of the Order into the Commission public utility fund account described in Ind. Code § 8-1-6-2, through the Secretary of the Commission, as well as any additional costs that were incurred in connection with this Cause:

Commission Charges:	\$ 6,364.28
OUCG Charges:	\$ 38,317.17
Legal Advertising Charges:	\$ <u>152.35</u>
Total:	\$ 44,833.80

8. In accordance with Ind. Code § 8-1-2-85, Petitioner shall pay a fee equal to \$0.25 for each \$100 of water utility revenue bonds issued, to the Secretary of the Commission, within 30 days of the receipt of the financing proceeds authorized herein.

9. The information filed in this Cause pursuant to the motion for protective order is deemed confidential pursuant to Ind. Code § 5-14-3-4, exempt from public access and disclosure by Indiana law, and shall be held confidential and protected from public access and disclosure by the Commission.

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

HUSTON, BENNETT, FREEMAN, AND ZIEGNER CONCUR; VELETA ABSENT:

APPROVED: AUG 21 2024

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

**Dana Kosco
Secretary of the Commission**

**STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION**

**REQUEST OF THE CITY OF)
EVANSVILLE, INDIANA TO: (1))
ADDRESS ISSUES ASSOCIATED WITH)
ITS DEBT TRUE-UP REPORT AND THE)
POTENTIAL IMPACT OF CURRENT)
MARKET CONDITIONS ON OVERALL)
CAPITAL PROJECT COSTS; AND (2) FOR) CAUSE NO. 45545 S1
AUTHORITY TO INCREASE ITS RATES)
AND CHARGES FOR WATER SERVICE)
PURSUANT TO THE TRUE-UP)
MECHANISM APPROVED IN CAUSE NO.)
45545 IN THE EVENT FINANCING)
AUTHORITY IS INCREASED.)**

STIPULATION AND SETTLEMENT AGREEMENT

Petitioner, the City of Evansville, Indiana, by counsel, (“Evansville” or “City” or “Petitioner”) and the Indiana Office of Utility Consumer Counselor (“OUCC”) (collectively, the “Settling Parties”), by their respective counsel, respectfully request the Indiana Utility Regulatory Commission (“Commission”) to approve this Stipulation and Settlement Agreement (“Stipulation”). The Settling Parties agree that the terms and conditions set forth below represent a fair and reasonable resolution of the issues described herein, subject to incorporation into a final order of the Commission, which approves this Stipulation without any modification or condition that is not acceptable to the Settling Parties.

1. In this proceeding, this Stipulation follows the Settling Parties’ prefiled subdocket testimony and attachments, as well as subdocket rebuttal testimony filed by Petitioner. Since the time of Petitioner’s filing of its rebuttal testimony in this Cause, the parties have engaged in discussions to address items the OUCC has identified in testimony as its primary issues in this Cause. Those interactions framed the discussions between the Settling Parties and formed the basis for the Settling Parties to reach agreement on the terms reflected in this Stipulation. A basic component of each party’s

willingness to enter this agreement is the overall result that is achieved hereby. The Settling Parties have agreed to concessions on individual issues to which the Settling Parties would not be willing to agree but for the overall result produced by this Stipulation and Settlement Agreement. In other words, each party is agreeing to forego or compromise on positions on individual issues in exchange for the overall result produced collectively by all of the concessions. As set forth below, the parties have negotiated terms that resolve all issues in this proceeding. In most cases, the agreed upon terms are founded upon documented positions that are in the record in this proceeding, including in Settlement Testimony that the Settling Parties have agreed each of them will file in support of this Stipulation. While the parties intend to submit testimony in support of the settlement, the parties agree that the respective cases of the parties and facts in evidence substantially support all terms of the settlement.

2. For purposes of Settlement, the Settling Parties stipulate and agree as follows:

a. **Authorized Financing Authority.** Petitioner agrees to publicly bid the Water Treatment Plant Project (the “WTP Project”) using the procedures set forth at Ind. Code § 36-1-12-4 (Public Works Projects). The Settling Parties agree that the total authorized financing authority approved in this proceeding shall be increased to \$271,850,000, which includes: (i) \$258,000,000 in estimated construction costs for the hybrid WTP Project; and (ii) reasonable design, inspection and non-construction costs associated with the WTP Project. The total also includes \$7,300,000 for lead service line replacements, which is to be included in the total authorization to the extent the Commission determines such approval is necessary.

b. **If Bids Exceed Amount Requested by Petitioner for Construction Costs.**

i. If the total awarded bid amount for construction costs related to the WTP Project exceeds [REDACTED] without change of project scope, and this causes the total financing authority calculated under Paragraph 2.a. to exceed the total financing

authority Petitioner has requested in this proceeding (\$271,850,000), the parties agree Petitioner should be permitted to secure from the Commission the necessary increase to its requested borrowing authority of \$271,850,000 not to exceed [REDACTED]

[REDACTED]

nothing herein prohibits Petitioner from seeking additional borrowing authority or limits the right of the OUCC to oppose that additional borrowing authority request or to otherwise take the position that Petitioner should not proceed with the WTP Project. For purposes of the application of this provision, Petitioner agrees the awarded bid shall not expand the scope of the project or deviate from the project presented in this sub-docket as most recently presented.

ii. **Public bidding parameters for the WTP Project.**

1. Petitioner does not expand the scope of the project.
2. The Project submitted to bid is consistent with the project presented in this sub-docketed case based on the most recent information provided.
3. Evansville will complete 100% design plans and specifications prior to issuing the advertisement for bids; Evansville will obtain an Indiana Department of Environmental Management (“IDEM”) construction permit and U.S. Army Corps of Engineers permit for the levee-related work prior to closing on the proposed bonds.
4. Based on the 100% design, Evansville’s design engineer(s) (Black & Veatch, Arcadis, etc.) will prepare independent Engineer Opinions of Probable Construction Cost (“EOPCC”) for the WTP projects prior to issuing the advertisements for bids. The EOPCC will list all major bid items for use in evaluating the contractor bids.
5. Evansville will follow the open, competitive bidding procedures in accordance with I.C. § 36-1-12 (Public Works Projects) to advertise for competitive bids and award the WTP projects on the basis of the lowest responsive, and responsible bidders within the established project budgets. The bid documents will list the same

major bid items listed in the Engineer Opinions of Probable Construction Cost.

6. To foster receipt of multiple competitive bids, preferably from five or more contractors, Evansville will widely advertise the WTP projects well before the bid dates, including in newspapers, on the City's website, in plan rooms such as the Dodge Construction Network, and other means recommended by the design engineers or used by Evansville. The design engineers will also identify potential contractors and contact them directly to inform them about the upcoming public bidding opportunities.
7. Evansville's design engineer will tabulate all bids received, prepare bid evaluations for the WTP projects, and make award recommendations for the WTP projects.

c. **Overcollection of Revenues.** Petitioner agrees to the following procedures for purposes of addressing the overcollection of revenues due to the delay in issuing the bonds authorized by the Commission in Cause No. 45545:

- i. To address ongoing overcollection of debt service, beginning with the implementation of the tariff for Phase 3, Petitioner will place \$178,765.66 per month on an ongoing basis into a separate account until the debt is issued.
- ii. To address ongoing overcollection of debt service reserve, beginning with the implementation of the tariff for Phase 3, Petitioner will place \$75,689.67 per month in a separate account on an ongoing basis until the debt is issued.
- iii. To address the overcollection of the debt service reserve in Phases 1 and 2, Petitioner will place \$1,135,345 into the same separate account before funds to be authorized pursuant to this settlement agreement are borrowed.

iv. Petitioner agrees that all funds in the account set up for the overcollection of revenues will be used to prepay the debt service reserve when the proposed bonds are closed.

d. **True-Up Process and Procedures.** Petitioner agrees to the following true-up process and procedures related to the proposed bonds:

i. At the time of issuance of the proposed bonds, Petitioner agrees to true-up rates to reflect debt service costs, pursuant to the true-up process as set forth in the main docket in this Cause, Cause No. 45545.

ii. Petitioner further agrees to true-up rates to reflect debt service costs at the time Phase 5 rates are implemented (expected approximately March 2026), pursuant to the true-up process described in Paragraph 2.d.i.

iii. Petitioner also agrees to true-up rates to reflect debt service costs at the time of the final payment for the WTP Project (currently estimated to take place October 2027), pursuant to the true-up process described in Paragraph 2.d.i. Petitioner further agrees any overcollection or undercollection of debt service funds will be set aside and the disposition of such funds will be addressed in Petitioner's next rate case.

3. **Other Settlement Terms.** Petitioner further agrees to develop a long-term Master Plan, which includes a hydraulic profile, for the orderly expansions, upgrades and additions to the Water Treatment Plant that are anticipated to be needed in the future. Petitioner agrees that such plan should identify and size these treatment processes and reserve space for these future improvements. Petitioner agrees the Master Plan should be completed by September 30, 2025. Petitioner further agrees to create a Future Site Plan or Layout identifying all existing and future treatment processes and structures.

Petitioner agrees the Future Site Plan should also identify and locate all buried process piping and utilities serving the Water Treatment Plant.

4. **Stipulation Effect, Scope and Approval.** The Stipulation is conditioned upon and subject to its acceptance and approval by the Commission in its entirety without any change or condition that is unacceptable to any Settling Party. Each term of the Stipulation is in consideration and support of each and every other term. The Settling Parties will work together to prepare an agreed upon proposed order to be submitted in this Cause. If the Commission does not approve the Stipulation in its entirety or if the Commission makes modifications that are unacceptable to any Settling Party, the Stipulation shall be null and void and shall be deemed withdrawn upon notice in writing by any party within 14 days after the date of the final order stating that a modification made by the Commission is unacceptable to the Settling Party.

The Stipulation is the result of compromise in the settlement process and neither the making of the Stipulation nor any of its provisions shall constitute an admission or waiver by any Settling Party in any other proceeding, now or in the future. The Stipulation shall not be used as precedent in any other current or future proceeding or for any other purpose except to the extent provided for herein or to the extent necessary to implement or enforce its terms.

The evidence to be submitted in support of the Stipulation, together with evidence already admitted, constitutes substantial evidence sufficient to support the Stipulation and provides an adequate evidentiary basis upon which the Commission can make any findings of fact and conclusions of law necessary for the approval of the Stipulation.

The parties agree that the communications and discussions and materials produced and exchanged during the negotiation of the Stipulation relate to offers of settlement and shall be privileged and confidential.

The undersigned represent and agree that they are fully authorized to execute the Stipulation on behalf of the designated party who will be bound thereby.

The Settling Parties will either support or not oppose on rehearing, reconsideration and/or appeal, a Commission Order accepting and approving this Stipulation in accordance with its terms.

ACCEPTED and AGREED this 18th day of June, 2024.

City of Evansville, Indiana

Indiana Office of Utility Consumer Counselor



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