

ORIGINAL

STATE OF INDIANA

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

INDIANA UTILITY REGULATORY COMMISSION

**PETITION OF AMERICAN SUBURBAN UTILITIES,)
 INC. FOR (1) AUTHORITY TO ENTER INTO TERM)
 CREDIT FACILITIES IN AGGREGATE AMOUNT) CAUSE NO. 46017
 UP TO \$10,000,000; (2) ENCUMBER PETITIONER’S)
 ASSETS AS SECURITY FOR SUCH LONG-TERM) APPROVED: OCT 23 2024
 DEBT; AND (3) AUTHORITY TO USE THE NET)
 PROCEEDS THEREFROM.)**

ORDER OF THE COMMISSION

**Presiding Officers:
 David E. Veleta, Commissioner
 Jennifer L. Schuster, Senior Administrative Law Judge**

On February 26, 2024, American Suburban Utilities, Inc. (“Petitioner” or “ASU”) filed its Verified Petition requesting authorization to enter into term credit facilities (“Long-Term Debt”) in aggregate not to exceed \$10,000,000. On that same day, ASU filed testimony and exhibits from Jennifer Z. Wilson, Municipal Advisory Director with Crowe LLP and John R. Skomp.

On May 23, 2024, the Indiana Office of the Utility Consumer Counselor (“OUCC”) filed its case-in-chief consisting of testimony and exhibits from Shawn Dellinger, Senior Utility Analyst, and Margaret A. Stull, Chief Technical Advisor.

On June 10, 2024, ASU filed the rebuttal testimony of witnesses Wilson and Skomp. Also on June 10, 2024, ASU filed a motion to strike portions of Mr. Dellinger’s and Ms. Stull’s testimony (“Motion to Strike”). On June 20, 2024, the OUCC filed its response to the Motion to Strike, to which ASU replied on June 27, 2024. On July 26, 2024, the Presiding Officers issued a docket entry denying ASU’s motion to strike.

The Commission held an evidentiary hearing on July 31, 2024 at 1 p.m. in Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. ASU and the OUCC appeared by counsel and participated in the hearing. At the hearing, the prefiled evidence of ASU and OUCC were admitted into the record without objection.

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

1. Notice and Jurisdiction. Notice of the hearing was published as required by law. ASU is a “public utility” as that term is defined in Ind. Code § 8-1-2-1(a). Under Ind. Code §§ 8-1-2-76 through 8-1-2-81, the Commission has jurisdiction over a public utility’s issuance of bonds, notes, or other evidence of indebtedness payable at periods of more than one year. Accordingly, the Commission has jurisdiction over ASU and the subject matter of this proceeding.

2. Petitioner's Characteristics. ASU is a public utility incorporated under Indiana law and is engaged in the business of rendering wastewater utility service to the public in unincorporated areas in Tippecanoe County. ASU's corporate office is located in West Lafayette, Indiana. ASU owns, operates, manages, and controls plant, property, equipment, and facilities which are used and useful for providing wastewater utility service.

3. Relief Requested. ASU seeks Commission approval to enter into long-term debt agreements with Horizon Bank for an aggregate amount up to \$10,000,000 with a maturity date of up to 30 years from the date of closing with variable interest rates, as outlined within the financing documents accompanying each debt issuance. ASU is to assume long-term credit facilities currently held by affiliate L3 Corporation with Horizon Bank, with all terms remaining the same except for ASU replacing L3 Corporation as the debtor on the agreements.

4. The Parties' Evidence.

A. Petitioner's Direct Evidence. Ms. Wilson described the current outstanding debt of ASU's affiliated company L3 Corporation ("L3"), including interest rate calculations, and how ASU seeks to rename that debt from L3 to ASU. As part of her testimony, Petitioner's Exhibit 1, she sponsored Attachment JZW-1, a letter from Horizon Bank, the holder of all the L3 debt, which states that they agree with ASU replacing L3 as the debtor/borrower on the L3 Debt. She also provided the loan documents for the outstanding debt as Attachment JZW-2 through Attachment JZW-7 to her testimony. She testified that L3 is currently subject to high-interest rate pressure from variable interest rates and, if approved, it could be advantageous in the future for ASU to convert from a variable interest rate to a fixed interest rate.

Ms. Wilson explained that Horizon Bank Loan Number 9970903 is the Indiana Finance Authority ("IFA") Adjustable Rate Demand Revenue Bonds, Series 2013 ("2013 L3 Bonds"). She said the 2013 L3 Bonds were originally executed on December 23, 2013, between L3 as the borrower and the IFA as the issuer for the amount of \$6,500,000 with a variable rate mode. She said the Series 2013 Bonds were subsequently converted to a flex private placement rate mode and a credit agreement was entered into with Horizon Bank on December 1, 2017, pursuant to a trust indenture dated December 1, 2013. Proceeds of the 2013 L3 Bonds were used to finance projects benefitting ASU and included the installation of (1) approximately 11,500 feet of 12" and 18" sewer that runs from County Road 50 West just west of the County Home Treatment Plant and runs southwesterly along Cole Ditch; (2) approximately 3,200 feet of 15" sewer along Klondike Road in West Lafayette; (3) approximately 5,000 feet of 15" and 18" sewer that runs from Klondike Road east to U.S. 231; and (4) the removal of sludge from holding lagoons and replacement with concrete aerobic digester tank in the existing Carriage Estates Wastewater Treatment Plant. She stated Horizon Bank will cap the interest rate at ten percent per annum in exchange for a one-time fee of \$5,000.

Ms. Wilson stated that Loan Number 9970904 is a taxable variable rate term loan that was executed with a credit agreement dated December 1, 2017 between L3 and Horizon Bank in the amount of \$2,820,000 ("2017 Taxable Loan"). She explained that portions of the proceeds of the 2017 Taxable Loan were to be used to 1) reimburse L3 for the final payment made toward satisfaction of the Adjustable Rate Taxable Securities, Series 2002, ("2002 L3 Bonds") in the amount of \$470,000; 2) redeem and refinance the L3 Adjustable Rate Taxable Securities, Series

2004 in the amount of \$2,350,000; and 3) pay any costs of issuance relating to the 2017 Taxable Loan, such redemption, and the purchase of the 2013 Bonds. She explained that the interest was set at the term loan rate, which is the sum of one-month Secured Overnight Financing Rate (“SOFR”) plus 1.41%. She stated that, at the time of her testimony, the current interest rate on this debt is 6.74%. She testified that Horizon Bank will cap the interest rate at ten percent per annum in exchange for a one-time fee of \$7,500.

Ms. Wilson stated that Loan Number 9970905 is an IFA Exempt Facility Revenue Bonds, Series 2017 Bonds (L3 Corp. Project) (“2017 L3 Bonds”). She explained that the 2017 L3 Bonds were executed December 1, 2017, between the IFA as the issuer, L3 as the borrower, and Horizon Bank as the purchaser. Proceeds of the 2017 L3 Bonds were to be used to finance the acquisition, construction, installation, and equipping of ASU’s wastewater facilities to increase the capacity of the ASU Carriage Estates Wastewater Treatment Facility from 1.5 million gallons per day (“MGD”) to 3 MGD and to eliminate chlorine and other chemicals by converting to an ultraviolet process to kill *E. coli* bacteria. This loan was in the amount of \$2,980,000. She said interest was set at the variable bank purchase rate, which is the sum of one-month SOFR plus 1.41%, multiplied by 66%, plus 0.25%. At the time of her testimony, she stated that the current interest rate on this debt is 4.70%. The maximum interest rate can be set to 10% if the 2017 L3 Bonds are changed from the Variable Bank Purchase Rate Mode to another interest rate mode as allowed by the 2017 L3 Bonds Credit Agreement. She said no principal has yet been paid, thus, the par amount currently outstanding is \$2,980,000.

Ms. Wilson explained that Loan Number 9973289 is a \$1,000,000 Construction Loan Agreement between L3 and Horizon Bank, executed on November 19, 2020 (“Construction Loan”). She stated proceeds of the Construction Loan were to be used for the installation of required pipelines, infrastructure and equipment relating to the expansion to the Cumberland Avenue West Lafayette Sanitary Sewer. Interest for the initial period of the Construction Loan is fixed at 4.25% per annum calculated on a basis of a 360-day year and calculated for the actual number of days elapsed during the period in which interest is charged, payable on the first day of each month. She said that, during each subsequent five-year period after the Initial Period, the interest rate shall equal the sum of the then-current five-year Constant Maturity Treasury rate plus 3.90%, but the loan rate shall not be less than 4.00%.

Ms. Wilson further explained that ASU has one outstanding loan with Horizon Bank. The \$5,100,000 IFA Exempt Facility Revenue Bonds, Series 2017 Bond Purchase and Loan Agreement (“2017 ASU Bond”) was executed on December 1, 2017, between the IFA as issuer, ASU as borrower, and Horizon Bank as purchaser. She said the funds were also used for the acquisition, construction, installation, and equipping of ASU’s wastewater facilities to increase the capacity of the ASU Carriage Estates Wastewater Treatment Facility from 1.5 MGD to 3 MGD and eliminate chlorine and other chemicals by converting to an ultraviolet process to kill *E. coli* bacteria. She said interest on the bonds was set to the bank purchase mode at a fixed bank purchase rate per annum equal to the total of the seven-year SOFR swap rate plus 4.53%, multiplied by 66%, plus 0.25%. At the time of her testimony, she stated that the current interest rate on this debt is 4.68%. The maximum interest rate can be set to 10% if the 2017 ASU Bonds are changed from the variable bank purchase rate mode to another interest rate mode, as allowed by the 2017 ASU Bonds Loan Agreement.

Ms. Wilson explained that the L3 debt is subject to high-interest rate pressure due to market conditions and an increase in the SOFR. She explained at the present time it would not be advantageous to convert the current interest rate structure into a fixed rate as rates are at historic high. In the future after rates stabilize, she stated it could be beneficial to consider switching to a fixed rate on the debt.

Mr. Skomp explained the history of ASU lending and the impact of assumption of L3 debt to ASU. He provided a breakdown of the four loans and explained that they totaled \$9,977,419. He said that, since no infusion of cash or addition of assets would be involved in this transaction, the accounting entry required to bring the L3 Debt onto ASU’s books would be as follows:

	Debt	Credit
ASU Equity	\$9,977,419	-
Long-Term Debt	-	\$9,977,419

He explained that this accounting treatment would lower the total amount of equity on ASU’s books while increasing the amount of ASU’s long-term debt.

Mr. Skomp explained that ASU is now seeking to bring the L3 Debt onto ASU books to address the Commission’s order and ASU’s other takeaways from Cause No. 45649 U.

B. OUCC’s Evidence. Mr. Dellinger described the OUCC’s concerns with the proposed transaction. He said that a more balanced capital structure should result in lower rates for ASU’s customers. He stated that, while ASU’s proposal to acquire its affiliate’s debt would result in lower capital costs and reduced income tax expenses, ASU does not propose any immediate relief for its ratepayers. He opined that ASU should not be authorized to acquire its affiliate’s debt unless its customers receive relief in the form of an immediate rate reduction reflecting the changes in ASU’s capital structure. Because the debt currently on L3’s books is primarily variable rate debt, he supported Ms. Stull’s recommendation that this unusual factor be addressed through a mechanism to avoid customers overpaying for borrowed capital.

Mr. Dellinger testified that recognizing all of the L3 debt ASU proposes to acquire and applying the Commission’s already approved return on equity (“ROE”) of 9.75% to calculate ASU’s weighted average cost of capital (“WACC”) would result in a lower flat monthly residential rate of \$59.37 from its current rate of \$65.57. While ASU proposes to assume nearly \$10 million of an affiliate’s debt, he observed that there is no apparent consideration flowing from L3 to ASU to support this transaction between distinct parties.

Mr. Dellinger stated that ASU’s proposal includes no assurance that any benefit will accrue to its customers and opined that a more leveraged utility is a riskier utility. He said that this relief is only equitable if ASU’s ratepayers also benefit from this change to lower rates at this time.

Mr. Dellinger explained that variable rate debt is problematic for ratepayers for a few reasons. He said variable rate debt is different in that it changes frequently. If this were a small amount of debt, it could be overlooked. But when the majority of a utility’s capital structure is variable rate debt, that becomes an issue. He added that volatility (the fluctuations and gyrations of short-term interest rates) creates risk, and a variable rate loan is riskier for the borrower than a

fixed-rate loan. He opined that risk associated with volatility is asymmetrically borne by ratepayers because a utility under recovering debt service expense may always file a rate case to address the under-recovery.

Mr. Dellinger recommended that the Commission authorize ASU to assume the entirety of L3's debt and, within 30 days of the final order in this case, direct ASU to decrease its rates to reflect the capital structure described in the testimony of OUCC witness Stull. If ASU is not ordered to decrease its rates to reflect its revised capital structure, he recommended that ASU's request to assume L3's debt be denied.

Ms. Stull recommended the 9.75% ROE determined in Cause No. 45649 U be implemented and applied to the equity portion of the capital structure resulting from the requested assumption of debt. She said that this capital structure and the resulting 6.30% WACC would include the 5.04% updated cost of debt to reflect the additional debt being assumed and the 9.75% unadjusted cost of equity the Commission determined in the rate case. She said that, as a result of the changed capital structure, the annual revenue requirement determined in Cause No. 45649 U decreases by \$466,083, reducing existing customer rates by 10.66%.

Ms. Stull said because ASU is assuming a considerable amount of variable rate debt, a mechanism should be established to track changes to the current variable interest rate included in the calculation of the 6.30% weighted average cost of capital and any variable interest rate changes. She opined that this mechanism is necessary to protect customers from decreases in the variable interest rates; ASU can always file a rate case if its interest expense increases.

Ms. Stull also recommended a deferral mechanism that will be calculated and recorded once a year as a deferred asset or liability. This deferred asset or liability will be accrued annually until ASU's next base rate case. She proposed that, after an order is issued in ASU's next rate case, the cumulative net deferral balance be amortized over a reasonable period of time through a charge or credit to the customer's bill that is outside of base rates. The fixed monthly charge or credit would be commensurate with the number of equivalent dwelling units ("EDU") for which each customer is billed. Once the net deferral has been fully recovered from or paid to customers, the charge or credit would be removed from ASU's tariff. She explained how the deferred amount should be calculated between now and the next rate order, that no other capital structure component be updated when calculating the deferral amount, and why the deferral amount is not grossed-up for income taxes. She further recommended the complete calculation of the updated cost of debt and updated WACC, as well as the calculation of the deferral amount, should be included as an attachment to ASU's IURC annual report.

Ms. Stull recommended the Commission order ASU to decrease its rates by 10.66% within 30 days of an order in this Cause. Finally, she recommended the Commission approve the OUCC's deferral mechanism to track changes in the interest rates applicable to the variable rate debt assumed by ASU.

C. Petitioner's Rebuttal Evidence. Ms. Wilson explained that she disagreed with the OUCC's concern that the variable rate debt is problematic. She stated that the overall current interest rate yield on the L3/ASU combined debt is lower than what L3/ASU would be able to issue as a fixed-rate debt in current market conditions. She opined that the current risk from the

variable rate in this case is significantly reduced from the risk that would be posed from a new issuance of debt in today's market at variable rates. She stated that, if the Commission orders a rate decrease in this financing case, she is unsure if ASU will be able to replace L3 as debtor. She said that Horizon Bank may be unwilling to approve the change in name on the loans from L3 to ASU as Horizon Bank's original letter approving the name change was made assuming the current rate structure remain in place.

Ms. Wilson also stated that, if the Commission authorizes ASU to assume the entirety of L3 debt and requires it to decrease the rate within 30 days of the final order, 30 days is not a sufficient amount of time for ASU to accomplish the documentation change. She noted the 30-day window to appeal the Commission's order. After that, she noted that ASU would need to hire bond counsel and Horizon Bank would likely also hire its own counsel to prepare and review the new documents. She stated that the documentation needed to make this change may be substantial and may also require additional approvals from Horizon Bank management, a process that could take several months for all documentation and approvals to be completed.

Mr. Skomp testified that the OUCC's proposed deferral mechanism to account for future changes in interest rates need not be decided at this time and should await ASU's next general rate case. He said that, while he may disagree philosophically with the OUCC on the regulatory capital structure that should result from this transaction, ASU is withdrawing its request to adjust for ratemaking the capital structure to account for disallowed plant. In other words, the entirety of the debt will be reflected in ASU's regulatory capital structure.

Mr. Skomp explained that it is not necessary for the Commission to establish a deferral mechanism to protect ratepayers. He opined that many factors change between a utility's rate cases, and the Commission should not adjust rates using an approach where a single ratemaking issue or component is adjusted while all other areas continue to be based on stale information. He noted that, in ASU's next rate case (which it plans to file in 2025), all parties can propose deferral mechanisms that they deem to be appropriate.

According to Mr. Skomp, as a result of this transaction, ASU will have a more balanced capital structure under terms that would not be available to it in the marketplace today. He noted that L3 is not obligated to allow ASU to replace it as debtor, and its willingness to do so is consideration. Even though no new cash will be received by ASU, the same could be said in a refinancing transaction. He said that ASU is refinancing equity with debt.

He noted that the OUCC did not express concerns about the overall structure of the loans with Horizon Bank or the general terms and conditions within the loan documents that were prefiled in this Cause.

5. Commission Discussion and Findings. Pursuant to Ind. Code §§ 8-1-2-76 through 8-1-2-81, the Commission has the authority, after consideration of all information that may be relevant or required, to investigate and approve or disapprove a proposal by a public utility to issue bonds, notes, or other evidence of indebtedness payable at periods of more than one year. The Commission must determine whether the proposed issuance is in the public interest in accordance with the laws addressing the issuance of securities by public utilities and whether the proposed issuance is reasonably necessary in the operation and management of the business of the utility in

order that the utility may provide adequate service and facilities.

Pursuant to Ind. Code § 8-1-2-78, a public utility may, with the approval of the Commission, issue bonds, notes, or other evidence of indebtedness payable at periods of more than 12 months for: (1) the acquisition of property, material, or working capital; (2) the construction, completion, extension, or improvement of facilities, plant, or distributing system; (3) the improvement of its service; (4) the discharge or lawful refunding of its obligations; and (5) the reimbursement of its treasury as provided under Ind. Code § 8-1-2-78(e).

The evidence reflects that the proposed financing is for the purpose of assuming loans taken by ASU's affiliate, L3 Corporation. The Commission finds that this purpose complies with the purpose requirements of Ind. Code § 8-1-2-78. We also find that ASU's proposed transaction is reasonably necessary in the operation and management of ASU's business. As Mr. Skomp testified on rebuttal, after the transactions proposed in this Cause, ASU will have a more balanced capital structure under terms that would not be available to it in the marketplace today. Thus, we find the proposed transaction will serve the public interest.

Regarding the terms and conditions of the proposed transaction, ASU is to assume long-term credit facilities currently held by affiliate L3 with Horizon Bank, with all terms remaining the same except for ASU replacing L3 as the debtor on the agreements (the "Assumption"). The OUCC argued that no consideration exists for this transaction, but Mr. Skomp explained on rebuttal that L3 is not obligated to allow ASU to replace it as debtor, and its willingness to do so is consideration. We agree L3's agreement to allow ASU to replace it as debtor is sufficient to serve as consideration. Based upon the evidence of record, we find that the terms and conditions of the Assumption are reasonable.

Pursuant to Ind. Code § 8-1-2-79, ASU properly filed with the Commission a Verified Petition and set forth the required description of the utility's proposed term credit facilities. ASU also provided evidence regarding the proforma capital structure for ASU under the proposed long-term debt agreements. ASU's proposed term credit facilities, together with its outstanding equity interests, notes maturing more than one year from the date thereof, and other evidence of its indebtedness will not include an excessive proportion of long-term debt for ASU, and will help move ASU toward the 40% debt to 60% equity ratio recommended by this Commission in Cause No. 45649 U.

Pursuant to Ind. Code § 8-1-2-80(b), the Commission has authority to impose conditions it deems reasonable upon a public utility issuing securities. Although not specifically articulated as a condition, the OUCC has proposed this Commission approve ASU's financing subject to a reduction in rates and the inclusion of a deferral mechanism to track interest rates on the variable rate debt.

In response, Mr. Skomp explained that Mr. Dellinger's and Ms. Stull's testimonies only discuss how the change of a single component within the ratemaking analysis should be used to adjust ASU's rates going forward. He testified that they do not mention any analysis they performed to determine if other components of the ratemaking analysis may have changed from the levels estimated and established in the January 18, 2023 Commission order in Cause No. 45649 U.

Mr. Skomp explained that Attachment JRS-R-1 is a copy of ASU's income statements for the 12 months ended December 31, 2022 and December 31, 2023. He discussed how these documents show ASU is underearning and provided an example. Mr. Skomp also opined that it is not necessary for the Commission to establish a deferral mechanism to protect the ratepayers. Ms. Wilson explained that Horizon Bank may be unwilling to approve the change in name on the loans from L3 to ASU as the Banks's original letter approving the name change was made assuming the current rate structure remains in place. She also explained that if the Commission authorizes ASU to assume the entirety of L3 debt and required it to decrease the rate within 30 days of the final order, 30 days is not a sufficient amount of time to accomplish the documentation change.

The Commission understands that the OUCC has concerns with ASU's rates. However, the Commission cannot impose a change in rates without the proper evidentiary support, and a financing petition is not the appropriate forum to make such a request. Mr. Skomp indicates that ASU plans to file a rate case by October 31, 2025 using a historic test year that will reflect a full 12 months with the new accounting software fully implemented. In the future rate case, all necessary financial information would be provided to determine whether ASU's rates should be adjusted. Mr. Skomp proposed on rebuttal:

If the OUCC can carry its burden of proving that ASU's returns at present rates are excessive **in total** as a result of this transaction using the then current data as opposed to the test year data from 2020, it can propose in that rate case the creation of a regulatory liability for the amount by which this transaction caused returns to be excessive that would begin to accrue following the closing on the transaction proposed here.

Petitioner's Exhibit 2-R at 8-9 (emphasis in original). We find this proposal adequately addresses the OUCC's concern.

In Consolidated Cause Nos. 44676 and 44700 and reiterated in Cause No 45649 U, the Commission directed ASU to move towards a more balanced capital structure, having a bank available and willing to effectuate such a transaction is key. The OUCC's proposal could jeopardize its bank relationships—as Ms. Wilson pointed out, if Horizon Bank is unwilling to move forward with the transaction because the Commission has ordered an immediate rate reduction, there is no guarantee that another potential transaction would present itself.

As such the OUCC's proposed conditions are rejected. Yet in doing so, the Commission believes that reasonable conditions attached to this particular financing are warranted to ensure a timely rate case is filed and allow timely relief should it be shown that ASU is over earning from this transaction. Therefore, we approve ASU's financing and impose as a condition that ASU file its next general rate case by October 31, 2025.

Therefore, based upon our review of the evidence, we authorize ASU to enter into long-term debt agreements with Horizon Bank for an aggregate amount up to \$10,000,000 with maturity dates of up to 30 years from the date of closing with variable interest rates. ASU is to assume long-term credit facilities currently held by affiliate L3 with Horizon Bank, with all terms remaining the same except for ASU replacing L3 as the debtor on the agreements. ASU shall file a report with the Commission and serve a copy on the OUCC no later than 30 days after closing with the

final terms of the Assumption.

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

1. ASU is authorized to carry out and consummate the assumption of long-term debt in an aggregate amount not to exceed \$10,000,000, including entering into and executing appropriate transaction documents and evidences of indebtedness in order to effectuate the issuance of the indebtedness described above.

2. ASU shall file its next general rate case by October 31, 2025.

3. ASU is granted a Certificate of Authority for the issuance of such securities.

4. ASU is authorized to execute and deliver such mortgages, indentures and other evidences of encumbrances or liens on ASU's assets as may be necessary to effectuate issuance of such secured debt and encumber ASU's assets.

5. ASU is authorized to execute and deliver promissory notes and other such transaction documents and evidences of indebtedness as are appropriate to effectuate the issuance of such secured long-term debt.

6. This Order is the sole evidence of our approvals and shall constitute certificates of authority granted to ASU as provided in Ind. Code § 8-1-2-80.

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

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

APPROVED: OCT 23 2024

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

Dana Kosco
Secretary of the Commission