

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF THE CITY OF)
EVANSVILLE, INDIANA, FOR)
AUTHORITY TO ISSUE BONDS, NOTES,) CAUSE NO. 45545
OR OTHER OBLIGATIONS, FOR)
AUTHORITY TO INCREASE ITS RATES)
AND CHARGES FOR WATER SERVICE,)
AND FOR APPROVAL OF NEW)
SCHEDULES OF WATER RATES AND)
CHARGES.)

PETITIONER'S SUBMISSION OF PROPOSED ORDER

Petitioner, the City of Evansville, Indiana ("Petitioner"), by counsel, hereby submits its
Proposed Order.

Respectfully submitted,



By:

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served this 16th day of November, 2021 by electronic mail to:

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Nicholas K. Kile

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ORDER OF THE COMMISSION

Presiding Officers:

David E. Ziegner, Commissioner

Stefanie N. Krevda, Commissioner

Loraine L. Seyfried, Chief Administrative Law Judge

On May 10, 2021, the City of Evansville, Indiana (“Evansville”, “City”, or “Petitioner”) filed its Petition seeking authority to issue bonds, notes or other evidence of indebtedness, to increase Petitioner’s rates and charges for water service and for approval of new schedules of water rates and charges. Included with its Petition, Evansville filed the direct testimony, including attachments and workpapers, of: (1) Lane T. Young, Executive Director of the Evansville Water and Sewer Utility (“EWSU”); (2) Douglas L. Baldessari, CPA with Baker Tilly Municipal Advisors, LLC (“BTMA”); (3) Michael Labitzke, Director of Program Management Office for EWSU; and Simon M. Breese, Vice President at AECOM and National Technical Director, Water Treatment, Americas.

On May 21, 2021, Petitioner and the Indiana Office of Utility Consumer Counselor (“OUCC”) filed a Stipulation as to Procedural Schedule. On May 21, 2021, the Indiana Utility Regulatory Commission (“Commission”) issued a docket entry establishing a procedural schedule in this Cause.

On July 20, 2021, the Commission issued a docket entry setting the field hearing in this Cause for August 4, 2021. The Commission issued a subsequent docket entry on July 27, 2021 vacating the public field hearing scheduled for August 4, 2021 and scheduling a new public field hearing for August 12, 2021.

On August 13, 2021, Petitioner and the OUCC filed an Agreed Motion to Modify Procedural Schedule. The Commission issued a docket entry on August 18, 2021 granting the parties’ request to modify the procedural schedule.

Pursuant to Ind. Code § 8-1-2-61(b), the Commission conducted a public field hearing in this Cause at the University of Evansville in Evansville, Indiana on August 12, 2021 at 6:00 p.m.

(local time) at which Evansville and the OUCC appeared and members of the public offered oral and/or written comments.

On September 3, 2021, the OUCC filed the testimony and attachments constituting its case-in-chief of: (1) Margaret A. Stull, Chief Technical Advisor in the Water/Wastewater Division; (2) Thomas W. Malan, Utility Analyst in the Water/Wastewater Division; (3) Shawn Dellinger, Utility Analyst in the Water/Wastewater Division; (4) James T. Parks, Utility Analyst II in the Water/Wastewater Division; and (5) Scott A. Bell, Director of the Water/Wastewater Division.

On September 24, 2021, Evansville filed the rebuttal testimony of Messrs. Baldessari, Labitzke and Breese.

On October 6, 2021, the Presiding Officers issued a docket entry request seeking additional information from the parties, to which Petitioner and the OUCC responded on October 12, 2021. The Presiding Officers issued a second docket entry request seeking additional information on October 22, 2021 and the parties responded on October 26, 2021.

Pursuant to notice published as required by law, a public evidentiary hearing commenced on October 27, 2021, at 10:15 a.m., in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Proofs of publication of the notice of the hearing were incorporated into the record of this proceeding by reference. Petitioner and the OUCC were present and participated. No members of the general public appeared or sought to testify at the hearing.

Having considered the evidence of record as well as the applicable law, the Commission now finds that:

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 § 8-1-2-42 and -42.7 and 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 municipal waterworks facilities providing water sales and service to customers in and near the City of Evansville, Indiana. Additionally, Petitioner sells water at wholesale to certain other customers.

3. Relief Requested. Petitioner requested authority to issue bonds, notes or other evidence of indebtedness and increase its rates and charges on an across-the-board basis through a five-phase rate increase: an increase of approximately 7.50% to be effective upon approval pursuant to this Commission's order in this Cause ("Phase I"), an increase of approximately 7.03% to be effective April 1, 2023 ("Phase II"), and increases of approximately 6.53%, 6.21% and 4.31% for Phases III, IV and V to be effective April 1, 2024, 2025 and 2026, respectively.

4. Test Year. Pursuant to Ind. Code § 8-1-2-42.7(d), Petitioner proposed a forward-looking test year be used in this proceeding on the basis of projected data for the twelve (12)-month period ending March 31, 2024 ("Test Year"). The test year begins not more than twenty-

four months following the filing of the petition, and it is based upon projected data, with the period of projection commencing from the close of the historic base period. The historic base period utilized by Petitioner in this proceeding is the twelve (12) months ending September 30, 2020. Petitioner believes the forecasted financial and accounting data, when properly adjusted pursuant to Petitioner's evidence, including, but not limited to, the substantial additional capital requirements Petitioner must meet and finance over the next five calendar years, fairly reflect the Petitioner's annual operations. Therefore, such test year, as adjusted, is a proper basis for fixing the requested new rates for Petitioner and testing the effect of those rates.

5. The Parties' Evidence.

A. Evansville's Case-in-Chief. Evansville introduced evidence from EWSU Executive Director, Lane T. Young. Mr. Young sponsored as Attachments LTY-1 through LTY-3 the three resolutions passed by the City's Utility Service Board authorizing the rate increase and bonding issuance requested in this Cause. Pet. Ex. No. 1, p. 4. Mr. Young testified that Evansville communicated with customers and citizens about the proposed rate increase and bond issuance and described these communications. *Id.* at 5. Mr. Young further testified that per the Commission's advice in Evansville's last rate case (Cause No. 45073), Evansville met with the Commission and the OUCC to discuss the proposals made in this Cause and to answer any questions. *Id.* at 5-6.

Mr. Doug L. Baldessari, CPA with BTMA reviewed Petitioner's rate needs and sponsored the Accounting Report as set forth in Attachment DLB-1. Mr. Baldessari explained how the Test Year was determined in this Cause and how the results for the Test Year were determined. Pet. Ex. No. 2, at 4-5. Mr. Baldessari testified Petitioner is using a twelve-month period that begins April 1, 2023, which is not more than twenty-four (24) months after Evansville filed its petition. *Id.* Mr. Baldessari explained how the rate increase would be phased-in over five phases, starting with a rate increase upon the issuances of any order or April 1, 2022. *Id.* at 6-7. Mr. Baldessari further explained how Ind. Code § 8-1-2-42.7 and Ind. Code 8-1.5-3-8 support raising rates in this fashion before the commencement of the Test Year. *Id.* at 6-9. Mr. Baldessari also walked through each of the fourteen adjustments to annual cash operating expenses and for the Forward Looking Test Year Petitioner is proposing in this Cause. *Id.* at 19-24.

Mr. Baldessari testified Petitioner's case is driven by a 5-year capital improvement plan made up of the construction of a new water treatment plant, improvements to the distribution system, road relocations, booster station improvements, engineering, planning and annual capital improvements. *Id.* at 17. He testified the various improvements in the CIP total \$269.2 million and Petitioner proposes to fund the CIP projects with a combination of \$220.2 million in bonds and \$49.0 million from extensions and replacements ("E&R") from the annual CIP allowance. *Id.* Mr. Baldessari testified Petitioner is requesting authority in this Cause to issue long-term debt in an amount of \$238,165,000 to fund the CIP. *Id.* at 11.

Mr. Baldessari testified Petitioner is requesting a rate increase phased-in over five phases to primarily fund debt service from the bond issue. *Id.* at 5. The percentage increase over the five phases is as follows: Phase I – 7.50%; Phase II – 7.03%; Phase III – 6.53%; Phase IV – 6.21% and Phase V – 4.31%. *Id.* at 9. Mr. Baldessari explained how the rate increase will be phased-in in a fashion to mitigate the rate impact on customers. *Id.* at 5-7.

Mr. Michael Labitzke, Director of the Program Management Office for EWSU, testified regarding the capital improvements Petitioner is proposing in this Cause. Mr. Labitzke testified Evansville is proposing to replace its existing Water Treatment Plant, as discussed in the Direct Testimony of Simon M. Breese, as well as proposing main replacement/relocation projects, Booster Station Improvements and Pump Addition Improvements in this Cause. Pet. Ex. No. 3, p. 10. Mr. Labitzke testified Petitioner is proposing to fund design and/or construction of seven (7) Refresh Evansville projects at an estimated cost of \$9.2 million, ten (10) Roadway Relocation projects at an estimated cost of \$43.0 million, two (2) Booster Station Improvements projects at an estimated cost of \$939,000, and Program Management Planning. *Id.* at 8. Mr. Labitzke described each of the projects and explained how the projects were identified using EWSU's prioritization methodology. *Id.* at 8-12.

Mr. Labitzke also testified regarding Evansville's proposal to relocate the City Garage as part of this Cause. Mr. Labitzke testified EWSU, in conjunction with its consultant, AECOM, evaluated a number of potential locations for the new WTP. *Id.* at 12. Mr. Labitzke testified AECOM's evaluation indicated that building the WTP on or near the existing WTP site would be the most cost-effective option. *Id.* He testified AECOM also evaluated potential options to identify the most cost-effective location for the plant, and identified the City Garage as the preferable location for the new WTP; therefore, EWSU is proposing to relocate the City Garage to a new location as part of this Cause. *Id.* Mr. Labitzke further testified the cost estimate for relocating the City Garage is \$13,114,999, and this cost estimate was developed in consultation with Evansville's consultants. *Id.* at 13-14.

Mr. Simon Breese, Vice President at AECOM and National Technical Director, Water Treatment, Americas, testified regarding Evansville's proposal to replace its Water Treatment Plant in this Cause. Mr. Breese sponsored Attachment SMB-1, which is the Water Treatment Plant Advanced Facility Plan ("WTPAFP") prepared by AECOM for its evaluation of the Water Treatment Plant. Pet. Ex. No. 4, p. 2. Mr. Breese testified regarding the relevant portions of the WTAFFP and described the proposed project.

Mr. Breese testified that the City of Evansville's existing Water Treatment Plant was originally constructed in the 1890s, and many of the components are beyond their useful life, prone to failure, and in need of major refurbishment or outright replacement. *Id.* at 5. He testified the overall level of reliability and redundancy in the plant poses a risk to the reliable supply of water to the City, and several instances have occurred in recent years where failures of key pieces of equipment have jeopardized the ability to deliver water. *Id.* at 5, 6. He further testified the existing plant is rated for a capacity of 60 mgd, but the effective capacity of the plant is thought to be approximately 45 mgd, as performance issues occur at higher flow rates. *Id.* at 6. He testified that demand projections anticipate average day demand and peak day demand rising to 36.4 mgd and 49.4 mgd, respectively, by year 2050. *Id.* For this reason, the City adopted a reduced rated design capacity for the new plant of 50 mgd. *Id.*

Mr. Breese discussed the alternatives that were evaluated to address the issues with the existing WTP. *Id.* at 9-11. These include three main alternatives – Rehabilitation of the existing WTP (Alternative 1), Construction of a new WTP (Alternative 2), and Construction of a new WTP using both surface water and groundwater, in an approximate 50/50 blend (Alternative 3) – as well

as a “Do Nothing” alternative involving continued, reactive refurbishment of existing facilities to keep the existing plant in service. *Id.* Alternative 2 was further subdivided into two sub-alternatives, including, constructing a new WTP on the existing WTP site (Alternative 2A) and constructing the WTP on a new site (Alternative 2B). *Id.* at 10. Based on AECOM’s evaluation of these alternatives as documented in the WTPAFP, Mr. Breese testified it is recommended that the City construct a new 50 mgd Water Treatment Plant on a new site east of the existing site (Alternative 2B). Mr. Breese further testified that if residuals management is required, it is recommended to rehabilitate a portion of the existing WTP for residuals management. Mr. Breese further testified the estimated construction cost for Alternative 2B is \$151 million, and if a new residuals management facility is required, this will add an estimated \$30 million to the cost. *Id.* at 15-16.

Mr. Breese ultimately testified replacement of the existing WTP is reasonably necessary for the City to continue providing reasonable and adequate water utility service, as the existing plant is beyond the end of its effective life and continued operation of it would dramatically increase the risk of a major failure occurring which would lead to plant outage and loss of water supply to the City. *Id.* at 16.

B. OUCC’s Case-in-Chief. The OUCC offered prefiled testimony from Margaret A. Stull, Thomas W. Malan, Shawn Dellinger, James T. Parks and Scott A Bell.

Margaret A. Stull, Chief Technical Advisor in the Water/Wastewater Division, presented the OUCC’s accounting schedules and the overall results of its analysis. Ms. Stull sponsored Table MAS-5, which included a comparison of the overall revenue requirement proposed by Petitioner and the OUCC. Pub. Ex. No. 1, p. 14. Ms. Stull walked through each of the OUCC’s proposed adjustments to Evansville’s *pro forma* operating revenues and *pro forma* operating expenses. *Id.* at 14-57.

Ms. Stull ultimately recommended the Commission approve an overall revenue increase of \$9,185,727 and an overall across-the-board rate increase of 20.84%. *Id.* 57. She further recommended the Commission authorize the rate increase to commence no earlier than the first day of the forward-looking test year, April 1, 2023. *Id.*

Thomas W. Malan, Utility Analyst in the Water/Wastewater Division, testified regarding Petitioner’s proposed revenue requirement for payments in lieu of taxes (“PILT”) and explained how the OUCC arrived at its own calculation for PILT. Pub. Ex. No. 2, p. 4. Mr. Malan presented the OUCC’s calculations on Table 2 in his testimony. *Id.* at 5. Mr. Malan also recommended certain operating expense adjustments to Petitioner’s based period operating expenses for lease/rent, salaries and wages, and employee benefits. *Id.* at 5-15.

Shawn Dellinger, Utility Analyst in the Water/Wastewater Division, testified regarding Petitioner’s proposed \$238,165,000 bond issuance. Mr. Dellinger recommended the Commission grant Petitioner authority to borrow up to \$167,000,000 at an interest rate of 4.75%, with the authorization consisting of \$52,000,000 for the open market borrowing and \$115,000,000 for the SRF borrowing. Pub. Ex. No. 3, p. 16-17. Mr. Dellinger further recommended the Commission approve a Debt Service Annual Revenue Requirement of \$3,675,000, as well as a Debt Service Reserve Annual Revenue Requirement of \$735,000. *Id.* at 17. Mr. Dellinger also recommended

the Commission establish the true-up procedures as set forth in Mr. Dellinger's testimony. *Id.* at 17.

James T. Parks, Utility Analyst II in the Water/Wastewater Division testified regarding Petitioner's \$269.2 million capital improvement plan. Mr. Parks recommended that Evansville size its new plant for 40 MGD instead of the proposed 50 MGD based on his analysis of likely future water demands. Pub. Ex. No. 4, p. 42. He recommended Petitioner be authorized \$104,885,460 to construct the new WTP and City Garage. *Id.* at 43. Mr. Parks further recommended Petitioner conduct another life cycle cost analysis for a properly sized plant able to meet the 28.4 MGD design average day flow and the 40 MGD maximum day design. *Id.* at 42. With respect to constructing the new City Garage, Mr. Parks recommended the Commission authorize approximately \$3.5 million for relocation of the City Garage, or, alternatively, that Petitioner move the site for the new plant to just south of the proposed City Garage site. *Id.* at 42-43. Finally, Mr. Parks recommended Petitioner annually submit a capital improvements reconciliation along with its IURC Annual Report, setting forth the projects completed, improvements actually implemented, the feet of water main replaced and the costs thereof. *Id.* at 43-44. He recommended that to the extent planned projects are completed for less than the estimates in Cause Nos. 44760, 45073 and 45545, Petitioner should use the savings in a prudent manner toward completion of only other needed water main replacement projects identified in Petitioner's prioritized water main replacement program at the discretion of Petitioner. *Id.*

Scott A. Bell, Director of the Water/Wastewater Division, testified regarding Petitioner's proposed residuals management facility and its decision to use a Guaranteed Savings Contract (GSC) to construct the proposed new WTP. Mr. Bell recommended the Commission deny Evansville's inclusion of \$30 million in its SRF debt financing due to its pending Application for a Variance from Indiana Water Quality Standards for mercury. Pub. Ex. No. 5, p. 17. He further recommended Evansville reevaluate its decision to use a GSC in constructing the proposed WTP. *Id.* He recommended that if Evansville chooses to use a GSC, any unused budget amount should be retained in a restricted account only to be used for capital projects such as a main replacements. He further recommended Petitioner should be required to report, within 60 days of final completion of the water treatment plant project, whether any unused budget amount remains and how those funds will be used. *Id.*

C. Evansville's Rebuttal Case. On rebuttal, Evansville offered testimony from Doug Baldessari, Michael Labitzke and Simon Breese.

Mr. Baldessari testified he disagreed with the OUCC's calculation of its proposed overall rate increase and explained which of the OUCC's proposed adjustments Petitioner is willing and unwilling to accept. Pet. Ex. No. 1-R, p. 20-29. Mr. Baldessari also responded to Ms. Stull's recommendation that the Commission not authorize the Phase I interim period rate increase before the Forward-Looking Test Year. He testified he disagreed with Ms. Stull's recommendation because nothing in Ind. Code § 8-1-2-42.7 prohibits a rate increase taking effect before the beginning of the Test Year; he testified, however, Evansville is willing to defer the first increase until the beginning of the Forward-Looking Test Year if that is the Commission's preference. *Id.* at 3-4.

Mr. Baldessari also testified he disagreed with the OUCC's drastic reductions to Petitioner's financing in this Cause and explained why he disagreed with the OUCC's recommendations to reduce the debt issuances for the new WTP, residuals management facility and relocating the City Garage. *Id.* at 6-11. Mr. Baldessari also responded to Mr. Dellinger's recommendations related to Petitioner's proposed financing and explained which of these recommendations Petitioner is willing to accept. *Id.* at 12-19.

Mr. Baldessari sponsored a revised revenue requirement as Petitioner's Attachment DLB-R1 incorporating the adjustments Mr. Baldessari accepted on rebuttal. Mr. Baldessari testified regarding the new rate increases based on the four and five-year phase in. *Id.* at 29-30. He testified the original proposed aggregate rate increase was 35.54% and is now proposed to be 31.24%. *Id.* at 30. He testified if the Commission would prefer to keep the originally proposed 5-phase increase, then the increases would be 6.19% for Phase I, 6.19% for Phase II, 5.87% for Phase III, 5.52% for Phase IV and 4.52% for Phase V.

On rebuttal, Mr. Breese responded to Mr. Parks' recommendation to reduce the capacity of Evansville's new WTP from 50 MGD to 40 MGD, as well as other concerns that Mr. Parks and OUCC Witness Bell raised. Mr. Breese testified he disagreed with the OUCC's recommendation to reduce the capacity of the plant, and testified AECOM's population and growth projections, of which the 50 MGD capacity recommendation was based on, are reasonable. Pet. Ex. No. 2-R, p. 2. Mr. Breese reiterated that population growth and water demand projections are not an exact science, but there are general principles which constitute good practice in facility planning and sizing that apply directly here and which informed AECOM's recommendation on the plant size. *Id.* One of these general principles is projections should be developed which reflect **peak day** demand; Mr. Breese testified peak day demands have routinely exceeded 30 MGD in recent years, and exceeded 35 MGD in summer of 2016, peaking at 37.5 MGD (emphasis original). *Id.* at 3. Mr. Breese testified these are actual demands and he strongly believes it is incredibly risky for Evansville to consider sizing its new plant just 2.5% higher than actual demands recorded 5 years ago. *Id.* He testified he has been doing master planning and design of drinking water treatment plants for over 35 years, and he has never seen a proposal to size a new treatment plant for a capacity less than 20% larger than recently recorded peak day demands. *Id.* at 9. He further testified this would constitute poor engineering practice. *Id.* Mr. Breese further testified that in sizing a plant, a reasonable allowance should be included for growth. *Id.* at 3. Mr. Breese discussed the I-69 expansion connecting Evansville to Indianapolis, and how this could lead to additional industrial and commercial growth within the planning period. *Id.* at 4. He testified that it remains AECOM's firm opinion that 50 MGD is the appropriate capacity of the plant especially recognizing the potential for growth inducing impacts of the I-69 development. *Id.* at 9.

Further, Mr. Breese testified it generally costs more to build a plant in many stages than it does to build the same plant in fewer stages. *Id.* at 5. He testified AECOM estimated a reduction in the proposed plant capacity from 50 to 40 MGD would only result in an estimated cost savings of 7%. *Id.* Mr. Breese testified he does not believe the modest cost savings is worth the risk posed by building a new plant which is only marginally larger than the present day peak demands only to later incur a higher cost to build to the capacity AECOM's planning shows is prudent now. *Id.* at 6.

Mr. Breese also responded to Mr. Bell's and Mr. Parks' recommendations that using groundwater in the plant design would ease or eliminate the need and cost for a residuals management facility. Mr. Breese testified that as explained in Attachment SMB-1, it would not be cost effective to develop groundwater supply to a sufficient extent as to supplant surface water entirely as a source of supply. *Id.* at 12. He testified further the OUCC's contention that the use of groundwater would ease or eliminate the need and cost for a residuals management facility is a gross over-simplification. Mr. Breese also explained why this would not change AECOM's recommendation that the plant continue to use 100% Ohio River as the source of supply for the plant. *Id.* at 14-16.

On rebuttal, Mr. Labitzke responded to Mr. Parks' recommendations regarding relocation of the City Garage. Mr. Labitzke testified he disagreed with Mr. Parks' recommendation that Evansville only be authorized \$3.5 million to relocate the City Garage. Pet. Ex. No. 3-R, p. 3. He testified AECOM evaluated several sites for locating the new WTP, and it was determined that relocating the new plant to the City Garage site, and building a new City Garage at an offsite location, was the most cost-effective option for Petitioner to pursue. *Id.* at 2. Mr. Labitzke further testified that in relocating the City Garage, the City is required to consider costs beyond the fair market value of the property, including, meeting all current building codes, ADA accessibility, parking requirements, electrical service, heating types, restroom facilities, etc. *Id.* at 3-4. Mr. Labitzke explained the proposed \$13.2 million cost for relocating the City Garage considers all of these additional costs. *Id.* at 4. Further, Mr. Labitzke testified he disagreed with Mr. Parks' alternative recommendation that the new WTP site be moved to a new site just south of the proposed City Garage site. He testified this site was not considered because it is part of the ponding area governed by the Evansville Vanderburgh Levee Authority and Army Corps of Engineers and is used for flood storage when pumps used to pump stormwater to the Ohio River cannot keep up. *Id.* at 4. Mr. Labitzke further testified that without this ground remaining low and used for stormwater storage, homes in Evansville would flood during the 1% storm. *Id.* Mr. Labitzke also responded to Mr. Bell's criticisms of Evansville's decision to use a GSC to construct the new WTP and explained why Evansville continues to believe this is the appropriate method to construct the plant. *Id.* at 5-12.

6. Commission Discussion and Findings.

A. Evansville's Proposed Financing. Evansville initially sought authority to issue bonds in the total amount of \$238,165,000. On rebuttal, Evansville reduced this amount to \$235,705,000. The reduction was due to a reduction in the assumed interest rate for capitalized interest and to eliminate preliminary engineering costs ("PER") as recommended by the OUCC. Pet. Ex. 1-R, p. 15. The requested financing, indeed the bulk of this entire case, is driven by Evansville's proposal to build a new 50 MGD water treatment plant. This is a multi-generational investment. Evansville's existing WTP was originally constructed in the 1890s and presently serves as the source of drinking water for customers across multiple counties in Southwest Indiana. The OUCC did not dispute that the plant is past its useful life and needs to be replaced. The OUCC did, however, take issue with the overall capacity of the plant and recommended a reduction from 50 MGD to 40 MGD. The OUCC also recommended the proposed cost of the plant be reduced by 20% to correspond with the 20% proposed reduction in capacity as well as reductions in the cost of replacing the City Garage which is to be relocated to accommodate the new water treatment

plant. Pub. Ex. No. 4, p. 43. The OUCC further recommended removal of Petitioner’s proposed residuals management facility in the amount of \$30,000,000. Pub. Ex. No. 5, p. 17.

The reconciliation between Evansville’s and the OUCC’s proposed construction costs to be financed is as follows:

City Estimated Cost	\$175,838,000 ¹
Less: OUCC Capacity Reduction	24,011,000
Less: Residuals Management	30,000,000
Less: Garage Relocation Reduction	9,700,000
Less: Associated nonconstruction reduction	888,000
OUCC Estimated Cost	\$113,015,000 ²

Our task is to approve a level of rates and charges that is reasonable and just. To be reasonable and just, the revenues to be produced must be sufficient to, among other things, “provide adequate money for making extensions and replacements to the extent not provided for through depreciation.” Ind. Code § 8-1.5-3-8(c)(5). Evansville seeks adequate money from a combination of debt and rate revenues. We will begin with the proposed debt issuances. Specifically, Evansville proposes financing authority totaling \$235,705,000, which would be made up of two bond issuances, one that will potentially be open market in the amount of \$64,090,000 and another issuance through the State Revolving Fund in the amount of \$171,615,000. Pet. Ex. No. 2, Attachment DLB-R1, p. 1. The financing will fund construction of a number of projects as well as associated nonconstruction costs. The OUCC proposes financing authority of \$167,000,000, with the difference driven by the construction cost of the new treatment plant noted above.³ *Id.*; Pub. Ex. No. 3, p. 3.

Our standard typically applied for approving municipal utility financing is whether the “request to issue long-term debt to fund capital improvements and pay for certain operation and maintenance expenses is reasonable and necessary in order for . . . [the municipal utility] to provide adequate and efficient water service.” *City of Michigan City*, Cause No. 44538 (IURC 5/27/2015), p. 10. As noted, the OUCC’s proposed reduction of approximately \$24 million for the reduced

¹ Mr. Baldessari testified that there had been an update on scoping since the preparation of reports that had caused a slight increase in the total estimated construction cost, but that the City did not want to delay the case for the minimal adjustment that it would produce. Pet. Ex. No. 2, p. 14.

² See Pub. Ex. No. 4, p. 43.

³ The remaining difference between the proposals consists of the OUCC’s elimination of (1) two line items in the total amount of \$1,100,000; (2) \$8.5 million of capitalized interest; and (3) flow through adjustments to the underwriters fees and IURC fee based on the total amount authorized. Pub. Ex. No. 3, pp. 3-4.

capacity from 50 to 40 MGD, its removal of \$9,700,000 in costs related to relocating the City Garage, and the elimination of the residuals management facility for \$30 million, largely make up the difference between the OUCC's recommended construction costs for the new plant which leads to the difference from the OUCC's proposal that Evansville be authorized to borrow \$167 million and Petitioner's original request to borrow approximately \$238 million. Thus, we will take each of these issues in turn to determine whether these components are reasonable and necessary in order for Petitioner to provide adequate and efficient water service.

(a) **Water Treatment Plant Capacity**. As we noted previously, this is a multi-generational asset serving Southwestern Indiana. Petitioner proposed to replace its existing 60 MGD plant by constructing a 50 MGD capacity facility based on the recommendation of its consultant, AECOM, and witness Simon Breese. The OUCC recommended the proposed plant capacity be reduced to 40 MGD. We have previously set forth the factors that are to be considered when determining the level of appropriate capacity for purposes of public water utilities, and we find that we should be guided by the same concepts here. Those factors are as follows:

- (1) The prudence of the decision to construct the new plant;
- (2) The reasonableness of the demand forecasts;
- (3) Whether there were changed circumstances during construction necessitating a reevaluation of the decision to continue with construction;
- (4) The lead time to construct new facilities;
- (5) The necessity to provide adequate and reliable utility service;
- (6) The utility's need for a margin of safety or reserve;
- (7) The financial impact on the utility of a finding of excess capacity and the long-term effect on the ratepayers; and
- (8) The risk that changes in demand projections will impact the utility's reserves and ability to serve its customers.

In Re Indiana-Am. Water Co., Inc., Cause No. 40703, pp. 15-16, 1997 WL 913208 (Dec. 11, 1997).

We do not find it necessary to address all of these factors. We will instead discuss only those factors we find are instructive in making the determination of what capacity— 50 MGD or 40 MGD — is appropriate for purposes of this Cause.

The first factor we will consider is the reasonableness of the demand forecasts. Mr. Breese testified on direct that AECOM's demand projections anticipate average day demand and peak day demand rising to 36.5 MGD and 49.4 MGD respectively by the year 2050, and thus, the City adopted a rated capacity of 50 MGD for the plant. Pet. Ex. No. 4, p. 6. Mr. Breese also testified on rebuttal that while population growth and water demands is not an exact science, AECOM's projections are based on proven techniques for estimation of future water demands, and include an allowance for unforeseen growth and an appropriate planning period. Pet. Ex. No. 2-R, pp. 2-6. In

its case-in-chief, the OUCC disagreed with AECOM's demand projections and recommended Petitioner re-evaluate the water demand forecasts using updated Indiana Business Research Center ("IBRC") population forecasts based on 2020 Census data.

We do not need to reach the issue of which party's demand projections are correct. While demand projections are an important tool in determining whether the proposed capacity is appropriate, we agree with Mr. Breese projecting water demands is not an exact science. Further, we believe a number of different tools and techniques can be used to project demand, and there is not one definitive way to reach a reasonable result. What is instructive here is the **actual demand** Evansville has experienced over the past five years (emphasis added). Mr. Breese testified on rebuttal that demand projections should be based on peak day demand, and Evansville's actual peak day demands have routinely exceeded 30 MGD in recent years, and exceeded 35 MGD in the summer of 2016, peaking at 37.5 MGD. Pet. Ex. No. 2-R, p. 3. This is supported by data on raw and treated water for the period 2013-2018 included in Attachment SMB-1 which showed many days in excess of 30 MGD. Attachment SMB-1; Pet. Ex. No. 2-R, pp. 7-8.

The OUCC's demand forecast projects a maximum day demand in 2050 between 34.5 MGD and 39.7 MGD. Pub. Ex. No. 4, p. 19. In other words, the OUCC's forecasted demand in 30 years is essentially equal to current demand. If the Commission were to accept the OUCC's recommendation that 40 MGD is the appropriate capacity, this would leave the City of Evansville with a new plant sized just 2.5% higher than actual demands recorded 5 years ago. We agree with Mr. Breese this approach is incredibly risky for the City of Evansville and could leave the City unable to reliably meet demand in the future. Evansville could very well experience a demand during construction or shortly thereafter that exceeds the new plant's capacity. With the magnitude of this investment, we are reminded of what we said in *Indiana American*: "there would be outrage, not just 'some concern' both on the part of the customers and this Commission if only three weeks after building new treatment plants, Petitioner experienced a demand that exceeded the capacity of the affected systems." *Indiana American*, Cause No. 40703, p. 18. Mr. Parks may have issues with some of the assumptions underlying the City's forecast, but the City's forecast allows margin for growth in demand over the planning horizon. Thus, we find an analysis of both actual and projected demand support a 50 MGD plant.

The second factor we will consider is the utility's need for a margin of safety or reserve. This factor relates to a third factor - the risk that changes in demand projections will impact the utility's reserves and ability to serve its customers – and thus we will consider these factors together. Mr. Breese testified on rebuttal that "while retrospective reviews of historical trends in population growth and water demands are instructive in assessing future growth, they can never be the only metric used...[a] reasonable allowance should be included for growth including unforeseen growth. Pet. Ex. No. 2-R, p. 3. We agree. Mr. Breese testified that AECOM's demand projections include an allowance for potential unforeseen growth associated with industrial and commercial expansion along I-69 corridor. *Id.* at 4. However, it appears the OUCC did not consider the same potential for unforeseen growth in its proposed demand projections. As noted, there is little or no margin in the OUCC's 40 MGD plant.

While commercial and industrial growth associated with the I-69 expansion is not guaranteed, we believe there is a very real possibility for such growth and Petitioner's evidence supports this. Since these various projections, the contractual maximum demand associated with

the Toyota expansion in Gibson County has increased by 1.5 MGD. Pet. Ex. No. 1-R, Attachment DLB-R2, p. 37. Further, in response to the Commission's Docket Entry Request dated October 6, 2021, Petitioner provided a list of commercial and industrial project requests it has received over the past 12 months. Pet. Ex. 5 (Response to Docket Entry Request dated October 6, 2021, Attachment IURC 1-2). The list includes 13 different project requests ranging from 550,000 gallons per day to 9 million gallons per day. *Id.* After making the multi-generational investment in a new treatment plant, Evansville, its customers, and the entire State of Indiana will expect Evansville to be able to respond to inquiries for service for economic development affirmatively. In addition, the risk associated with Evansville being unable to reliably meet demand, or to support economic development in the region, far outweighs the benefit associated with building a smaller plant in the event such demand does not materialize. We will discuss these benefits in the following section. We find an analysis of these factors support a 50 MGD plant.

The next factor we will consider is the financial impact on Evansville of a finding of excess capacity and the long-term effect on the ratepayers. Mr. Breese testified on rebuttal that AECOM estimates a reduction in the proposed plant capacity from 50 MGD to 40 MGD will result in an estimated cost savings of only 7%. Pet. Ex. No. 2-R, p. 5. He further testified the overall cost of subsequently expanding to 50 MGD would end up being more than it would have cost to construct the 50 MGD plant now. *Id.* In response to the Commission's Docket Entry Request dated October 6, 2021, AECOM estimated that a 10 mdg expansion in the future might cost \$15-20 million in 2021 dollars. Pet. Ex. 5. The OUCC does not appear to have quantified the long-term effect a reduction from 50 to 40 MGD would have on ratepayers.

This factor requires us to balance the financial impact of an excess capacity finding on both the utility and ratepayers, however, we find this analysis to be one and the same. While reducing the capacity to 40 MGD could save ratepayers money in the short-term, the record shows this savings is estimated to be minimal – only \$7 million out of an approximately \$175,838,000⁴ total construction cost. And, to achieve that savings, Petitioner would need to know that its future demands will not exceed 40 MGD, an extremely risky assumption when Evansville's historic demands have already nearly reached that level. *Tr.*, p. A-86. Further, as evidenced by Petitioner's response to the Commission's docket entry, attempting to add additional capacity later could be very costly for both the utility and ultimately its ratepayers. Evansville's inability to meet future demand or to support economic development in the region could also have a significant financial impact on both the utility and its customers. We agree with Mr. Breese that a modest cost savings of \$7 million is not worth the risk posed by building a 40 MGD plant. Thus, we find this factor supports building a 50 MGD.

The final factor we will consider is the necessity to provide adequate and reliable utility service. We find this factor weighs heavily in favor of building a 50 MGD plant. A water utility is to provide reasonable and adequate service to its customers. As has been previously stated, the OUCC's proposed 40 MGD capacity is only 2.5% higher than actual peak day demands recorded

⁴ Mr. Baldessari testified that there had been an update on scoping since the preparation of reports that had caused a slight increase in the total estimated construction cost, but that the City did not want to delay the case for the minimal adjustment that it would produce. Pet. Ex. No. 2, p. 14.

in 2016. This would leave Evansville with no margin of error and no room for unforeseen potential growth. Thus, the Commission finds this factor supports building a 50 MGD.

Ultimately, based on an analysis of the excess capacity factors set forth in *In Re Indiana-Am. Water Co., Inc.*, we find 50 MGD is the appropriate capacity to size Evansville's new Water Treatment Plant.

(b) **Residuals Management Facility**. Evansville requested \$30 million be included as part of its debt issuance to construct a residuals management facility to address residual mercury levels. OUCC witness Scott Bell testified it is premature to approve \$30 million in funding for the residuals handling facility because Evansville has a pending Individual Variance Application for mercury with IDEM. Pub. Ex. No. 5, pp. 6-7. He recommended Evansville's inclusion of \$30 million in its SRF debt financing be denied until a final determination has been made on the pending Variance application. *Id.* at 7, 17. He further testified if the construction of a residuals handling facility cannot be avoided, then Petitioner should request a subdocket be opened to request authority to issue debt to fund the residuals handling facility. *Id.* at 7. Mr. Bell further testified Evansville should reconsider the use of groundwater supply that may avoid the cost of constructing and operating a residuals handling facility. *Id.*

On rebuttal, Mr. Breese explained that the inclusion of the residual handling facility will not change the scope or design of the remainder of the project. Mr. Breese explained that, as documented in Attachment SMB-1, AECOM evaluated the use of groundwater to form all or a part of the supply to the plant and determined it would not be cost effective to develop the groundwater to supply a sufficient extent as to supplant surface water entirely as the source of supply. Pet. Ex. No. 2-R, p. 12. He further testified that contrary to the OUCC's assertion, it is highly unlikely using groundwater would eliminate the potential need for residuals handling at the plant. *Id.* at 14. Mr. Baldessari testified on rebuttal he disagreed with Mr. Bell's recommendation to cut the borrowing by \$30,000,000 for the residuals handling facility. Pet. Ex. No. 1-R, p. 8. Mr. Baldessari explained Mr. Bell's proposed subdocket approach would merely add needless delay, red tape and cost to completing the needed improvements. *Id.* at 9. Mr. Baldessari testified the proposed financing should be approved now, and Evansville will not issue the bonds for the residual handling facility if the project is not required. *Id.* He further testified since all debt issued by Petitioner will go through the true-up process, the rates and charges will be adjusted for any debt issued or not issued by Petitioner. *Id.*

As things stand today, the residuals management facility is needed because: (1) Evansville's NPDES permit imposes a mercury limit; and (2) Evansville cannot meet the mercury limit without the additional treatment facility. Pet. Ex. No. 1-R, pp. 8-9. Only if the variance is granted, will the residuals management facility not be needed, and Evansville has committed that it will reduce its actual borrowing by \$30,000,000 if the facility is not needed. As Mr. Baldessari explained, "prior to closing on the proposed bonds and loans, Evansville will know the final project costs along with the related non-construction costs, including the estimated capitalized interest." Pet. Ex. No. 1-R, p. 16. The debt service on the bond issue is not to be reflected in rates until even later, April 1, 2024. *Id.* Given that Evansville will true up the debt service to be reflected in rates at April 1, 2024 and thereafter to reflect the actual amount borrowed, there is no harm in including

financing authority today for this facility.⁵ Only the amount that is actually needed to build the plant that environmental agencies require will be borrowed and ever reflected in rates. If, on the other hand, the variance is not granted, there is no dispute that the residuals management facility is needed. At that point, opening a subdocket could very well cause a delay on the bond issuance, which could delay construction and risk other costs. We agree with Petitioner that the appropriate time to authorize the \$30,000,000 is in this Cause. It is highly speculative at this time whether IDEM will approve Petitioner's pending variance, and, even if it does, we are comfortable with Evansville's assertion that it will not issue the bonds for the residual handling facility if the project is not required. We agree with Mr. Baldessari that requiring Evansville to seek authority for the funding in a separate subdocket will only add additional costs and administrative burdens which are not necessary. Opening a subdocket is not necessary, as any changes in the amount of debt issued can ultimately be addressed through a true-up process. We find Petitioner should be authorized to borrow \$30 million for the residuals handling facility in this Cause, subject to the condition that the funds not be borrowed if the facility is ultimately not required.

(c) **Relocation of City Garage.** Petitioner is requesting \$13.2 million in financing as part of its proposal to locate the new Water Treatment Plant on the site of the existing City Garage and to relocate the City Garage. Mr. Baldessari testified the cost of relocating the garage is considered a cost of acquiring real estate for the Water Utility, but the Water Utility cannot use the condemnation process to acquire the property as it is already dedicated to a public use. Pet. Ex. No. 2, p. 17. Mr. Baldessari testified if the Utility *could* condemn the property, it could simply condemn the property and pay fair market value for it through the condemnation process. *Id.* at 18. However, because the Utility cannot condemn the property, the Utility must negotiate the purchase price, and it is reasonable under such circumstances that the seller would require the Utility to provide funds to replace the garage. *Id.*

In his testimony, Mr. Parks recommended this Commission authorize Petitioner to recover only \$3.5 million for the replacement cost of the existing garage and the value of the land. Pub. Ex. No. 4, p. 39. In the alternative, he recommended moving the site for the new plant to just south of the proposed City Garage site. Mr. Parks cited to an Indiana Department of Transportation manual which raises the concept of "functional replacement" and recognizes that the public entity whose property is being taken is entitled to receive as compensation the "functional replacement." *Id.* at 38-39. Mr. Parks testified Evansville has not estimated the additional costs for the increase in capacity and other betterments or enhancements for the new City garage. *Id.* at 39. He recommended Petitioner be authorized \$3.5 million in funding, which was derived from the number on the property tax card for the existing property. *Id.* Mr. Parks did not independently review the figure on the tax card.

On rebuttal, Mr. Baldessari testified he disagreed with Mr. Parks' recommendation to reduce the bond issue based upon the cost of relocating the City garage. Pet. Ex. No. 1-R, pp. 10-11. Mr. Baldessari agreed with Mr. Parks that Petitioner is asking for funding to pay the "functional replacement" of the City garage. *Id.* He testified Mr. Labitzke included in his direct testimony an attachment (Attachment ML-5) which attempted to monetize the functional replacement by

⁵ The same can be said of Mr. Parks' beliefs that construction cost estimates may be overstated. Evansville will know the final costs before it closes on the bond issue. Pub. Ex. No. 4, pp. 31-32.

estimating the cost of the replacement garage. *Id.* He testified Mr. Parks did not attempt to determine what he thought was beyond “functional replacement” and instead based his estimate on property tax information. *Id.* Further, on rebuttal, Mr. Labitzke explained the costs of relocating the City garage include more than the fair market value of a property. Pet. Ex. No. 3-R, pp. 3-4. He testified the City is required to meet functional equivalency and highest and best use requirements when acquiring new property. *Id.* Mr. Labitzke explained these require the City to consider costs beyond real estate value in relocating the garage, including, meeting all current building codes, ADA accessibility, parking requirements, electrical service, etc. *Id.* Mr. Labitzke further explained that all of these costs were considered when evaluating and including the \$13.2 million preliminary relocation cost in this Cause. Mr. Labitzke further explained the alternative site Mr. Parks recommended for the WTP is not feasible, as it is used for flood storage to protect the City during storms. *Id.* at 4. Mr. Labitzke testified without this ground remaining low and used for stormwater storage, homes in Evansville would flood during the 1% storm. *Id.*

Mr. Parks did not do any evaluation of whether the potential alternative site he identified would be appropriate for the new treatment plant; he just assumed that it would be a logical place for the plant. Pet. Ex. No. 1-R, Attachment DLB-R2, p. 57. We find that this other potential site identified by Mr. Parks is not a viable location for the new treatment plant, based on Mr. Labitzke’s rebuttal testimony concerning the role this site plays in City flood control. We further find \$13.2 million is the appropriate amount that should be authorized for relocation of the City Garage. Attachment SMB-1 included an evaluation of various sites for the new WTP, and AECOM determined locating the new WTP on the existing garage site was the most cost-effective option. Mr. Baldessari explained why fair market value for the property is not appropriate, and Mr. Parks appears to have acknowledged this when he cited the functional replacement standard. Mr. Labitzke’s Attachment ML-5 appears to quantify what the functional replacement would be for relocating the City garage. The INDOT manual upon which Mr. Parks relied for purposes of his functional equivalency argument states: “Because of the added review, oversight, and approval associated with the functional replacement process, the importance of early coordination cannot be over emphasized.” Pet. Ex. No. 1-R, Attachment DLB-R2, Deposition Exhibit 5, p. 3. Evansville presented an engineering study of functional replacement. Mr. Parks did not respond to the study; he did not indicate what he thought in the study was beyond functional replacement (if anything), or describe how such opinions would affect the value to be paid for the garage property. Instead, he merely relied upon information on a property tax card (notably for a parcel that is not subject to property tax), information that he did not even independently review. He should have indicated what in the study went beyond functional replacement. Further, Mr. Labitzke explained on rebuttal why \$3.2 million does not account for all of the costs that will be required for relocating the City garage and why the alternative site proposed by Mr. Parks is not feasible. The OUCC made no attempt to discount Petitioner’s proposed functional replacement cost estimates or to propose its own cost estimates. Thus, we find Petitioner’s estimate of \$13.2 million is appropriate, and \$13.2 million is the amount Petitioner should be permitted to borrow for relocating the City garage.

(d) **Other Issues.** The only remaining issues separating the amount of the OUCC’s and Evansville’s financing proposals include: (1) the OUCC’s recommendation to eliminate \$750,000 in PER expense and \$350,000 for estimated WIFIA fees; (2) elimination of \$8.5 million in capitalized interest; and (3) flow through adjustments to underwriters fees and the IURC fee based on the total amount authorized. Pub. Ex. No. 3, pp. 3-4. With respect to the \$750,000 in PER

expense, Petitioner conceded on rebuttal that this expense was funded through Cause No. 44760 and agreed it should be removed from the proposed financing in this Cause. Pet. Ex. No. 3-R, p. 13. With respect to the \$350,000 in WIFIA fees, Mr. Baldessari testified on rebuttal why the \$350,000 in WIFIA fees are appropriate and need to be included in the costs of issuance for the financing. Pet. Ex. No. 1-R, p. 12.

We find \$750,000 should be removed from the ultimate financing authority to account for the PER expenses that were previously funded through Cause No. 44760. Further, we find the \$350,000 of WIFIA fees included in the proposed financing are appropriate and should be authorized. Mr. Baldessari testified that the Indiana Finance Authority has filed a Letter of Interest to receive WIFIA funding, and Evansville intends to move forward in order to take advantage of lower cost borrowing. *Id.*, p. 12. The WIFIA loan has potential to produce significant savings for customers and should not be rejected by not authorizing the inclusion of fees to apply. For instance, WIFIA would be a draw loan that would reduce capitalized interest. *Id.*, p. 16. Further on the subject of capitalized interest, we are satisfied with Mr. Baldessari's testimony that the final amount of capitalized interest will be known (along with the final project costs) before the closing on the loan and therefore reflected in true-up and customer rates. *Id.*

The remaining issues concerning Petitioner's proposed financing relate to Mr. Dellinger's recommendations regarding an interest rate cap, debt service reserve requirements and true-up reporting requirements. With respect to the interest rate cap, Mr. Dellinger recommended a maximum interest rate of 4.75%. Pub. Ex. No. 3, p 7. Mr. Baldessari explained on rebuttal his concerns regarding capping interest rates in an uncertain market. Pet. Ex. No. 1-R, pp. 13-14. He testified an interest rate cap could lead to a delayed financing and additional costs to go back to the Commission for approval. *Id.* at 14. Further, Mr. Baldessari testified an interest rate cap is not necessary because Evansville will file a true-up report after the bonds are issued and will true-up the bond sizing for any changes to the project costs resulting from the differential in the assumed interest rates and the final interest rates, including capitalized interest, costs of issuance and underwriter's discount. *Id.* We agree with Mr. Baldessari that a cap on interest rates is not necessary here. We are satisfied that any change in interest rates can be addressed in the true-up report Petitioner has agreed to file. Therefore, we find Mr. Dellinger's recommendation to cap the interest rate at 4.75% is unnecessary and should not be approved.

With respect to debt service reserve, Mr. Dellinger testified Petitioner's debt service reserve should be placed in a restricted account and Petitioner should be required to provide notice if it 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. Pub. Ex. No. 3, p. 12. He also recommended specific reporting requirements related to spending from the debt service reserve. *Id.* On rebuttal, Mr. Baldessari testified Evansville agrees to place the revenue from the debt service reserve requirement in a restricted fund to either pre-fund a future debt service reserve fund or to lower future borrowing amounts. Pet. Ex. No. 1-R, p. 19. He testified however Evansville does not want to have to go through another true-up process and reduce rates once the debt service reserve is fully funded.

We agree with Mr. Dellinger's recommendation and find that, once the debt service reserve has been fully funded, Petitioner should place the revenue from the debt service reserve

requirement in a restricted account. We will address Mr. Dellinger's recommendations for the true-up process at the end of this Order.

(e) **Ultimate Finding.** Ultimately, for the reasons discussed herein, we find Petitioner's proposed projects are reasonably needed and Petitioner's proposed financing is a reasonable method for financing these improvements. Therefore, we find Petitioner should be authorized to borrow \$235,705,000 to construct a new 50 MGD water treatment, residuals management facility and to relocate the City Garage, among other things. If IDEM does not require the residuals management facility, Evansville's financing authority shall be reduced by \$30,000,000.

C. **Petitioner's Revenue Requirements.** As indicated previously, our charge is to approve rates that are reasonable and just. Reasonable and just rates are those which produce sufficient revenue to:

- (1) pay all the legal and other necessary expenses incident to the operation of the utility, including:
 - (A) maintenance costs;
 - (B) operating charges;
 - (C) upkeep;
 - (D) repairs;
 - (E) depreciation;
 - (F) interest charges on bonds or other obligations, including leases; and
 - (G) costs associated with the acquisition of utility property under IC 8-1.5-2;
- (2) provide a sinking fund for the liquidation of bonds or other obligations, including leases;
- (3) provide a debt service reserve for bonds or other obligations, including leases, in an amount established by the municipality, not to exceed the maximum annual debt service on the bonds or obligations or the maximum annual lease rentals;
- (4) provide adequate money for working capital;
- (5) provide adequate money for making extensions and replacements to the extent not provided for through depreciation in subdivision (1); and
- (6) provide money for the payment of any taxes that may be assessed against the utility.

Ind. Code § 8-1.5-3-8(c).

(a) **Revenue Adjustments.** Evansville proposed seven adjustments to base period operating revenues to arrive at its proposed *pro forma* operating revenues at present rates of \$44,267,951. Attachment DLB-1, p. 29. Evansville also proposed an additional \$753,658 decrease to operating revenues to reflect declining consumption during the period April 2022 through March 2023 and then further throughout the test year. Pet. Ex. No. 2, p. 32. The OUCC generally accepted each of these adjustments, with certain exceptions discussed in the following

sections, and proposed additional operating revenue adjustments to remove sales tax expense from residential revenues and to reflect additional sale for resale revenues from Gibson Water Authority. Pub. Ex. No. 1, pp. 16-17. The OUCC accepted all of Evansville's revenue adjustments associated with the COVID-19 pandemic except for the adjustment to residential sales. For that, Ms. Stull accepted the methodology but applied it to a larger base number, which Petitioner accepted on rebuttal. The OUCC ultimately recommended *pro forma* water operating revenues at present rates of \$44,087,215. *Id.* at 17. As discussed below, Evansville generally accepted each of Ms. Stull's recommendations on rebuttal, apart from her adjustment to reflect additional revenues from Gibson Water Authority. This issue will be addressed in the following paragraphs.

(i) *Gibson Water.* In its case-in-chief, Petitioner did not propose any adjustment to operating revenues to reflect increased water sales to Gibson Water Authority. Pet. Ex. No. 2, pp. 36-37. Mr. Baldessari testified that no additional revenues would be generated from the increase in water sales to Gibson, and any additional revenues that could possibly be generated, would not be realized until after Petitioner's Projected Data Period (as defined in Mr. Baldessari's testimony). *Id.* Ms. Stull testified she disagreed with Mr. Baldessari's assessment, as Gibson anticipates it will have increased demand from its customers in the near future, which will result in additional water sales for Evansville. Pub. Ex. No. 1, pp. 26-27. Ms. Stull estimated additional demand of 300,000 gallons per day based on the three-year revenue allowance included in the contract amendment entered into between Petitioner and Gibson. *Id.* at 28. She recommended a revenue adjustment to reflect the expected additional daily consumption of 300,000 gallons per day from Gibson, or \$318,645 on an annual basis. *Id.*

On rebuttal, Mr. Baldessari testified he disagreed with Ms. Stull's proposed adjustment for Gibson Water. He testified there is an issue with assuming that Petitioner will sell an additional 300,000 gallons per day beginning in Phase I because this amount is not sufficiently certain to be relied on for ratemaking. Pet. Ex. No. 1-R, p. 20. He testified the 300,000 gpd was an assumed amount used for purposes of the agreement because neither Evansville nor Gibson Water know how much or how soon the additional demand will be required. *Id.* Mr. Baldessari testified that in the event the assumed 300,000 gpd does not materialize each year, Petitioner would have a shortfall in revenues needed to support its annual revenue requirements over a three-year period. *Id.*

In order to address the additional revenues received from Gibson Water, Mr. Baldessari proposed that Petitioner prepare a true-up report for Phase V to account for any additional revenues. *Id.* at 21-22. He testified to the extent Petitioner is or is not realizing additional revenues from the agreement with Gibson Water, Evansville would adjust Phase V rates through the true-up process. *Id.* With respect to the incremental revenues that Evansville receives from Gibson Water before the true-up, Mr. Baldessari explained the process Evansville agreed to with Gibson Water to determine the incremental revenues is akin to the Commission's main extension rules, which now apply to municipalities. *Id.* at 22. He testified Evansville's investments in the facilities to provide Gibson with more capacity is essentially an additional extension and replacement that is not being funded and has not been otherwise funded. *Id.* For this reason, he testified the revenues that are assumed in the contract to come from Gibson Water should either (1) not be included in

pro forma revenues; or (2) be offset with additional E&R equal to the revenues, and the net effect is the same. *Id.*

(ii) *Other Revenue Issues.* On rebuttal, Mr. Baldessari testified Petitioner accepts the \$227,772 sales tax adjustment to base period revenues proposed by Ms. Stull. Pet. Ex. No. 1-R, pp. 22-23. He further testified Petitioner also accepts the corresponding COVID adjustment and Phase II and Phase III adjustments resulting from the additional revenues from the sales tax being added back to the base period. *Id.* at 23. Mr. Baldessari also testified Petitioner is willing to accept Ms. Stull's customer growth normalization calculation for the residential and public authority classes using the correct Phase III tariff rates from Cause No. 45073. *Id.* He testified Petitioner accepts the OUCC's calculation for the revenue growth calculation for the commercial class, but believes \$25,741 of additional revenues should be deducted for the additional commercial revenues already being calculated by Petitioner in its Adjustment 7. *Id.* Finally, Mr. Baldessari testified he agreed with Ms. Stull that the \$2,361 base period split connection fees should have been classified as other operating revenues, not as fire protection revenues. *Id.*

(iii) *Ultimate Finding.* We agree with Mr. Baldessari that \$25,741 of additional revenues should be deducted from the additional commercial revenues already calculated in Petitioner's Adjustment 7, and, thus, the only real issue we must address is the additional revenues from Gibson Water. The agreement with Gibson is drawn from our main extension rules, whereby Gibson will receive a credit against the cost of investment needed to provide the additional capacity equal to three years incremental revenues to be generated. While we agree with the OUCC that the additional revenues received from Gibson should be factored into the ultimate rates approved in this Cause, we also must factor in the effect on municipal utility revenue requirements from the application of the main extension rules. The three year revenue allowance is a requirement that the utility provide a portion of the capital needed to serve new growth. Municipal utilities receive their capital for such investment either from debt financing or from the extensions and replacement component of the revenue requirement. Here, the cost of these improvements needed to supply Gibson was not included in the revenue requirement. Thus, if we include the estimated amount of the credit that Gibson will receive through the revenue allowance in operating revenues, we would also need to increase the extensions and replacements element by a like amount. Accordingly, none of the revenue to be paid over the first three years of the contract should be included in pro forma operating revenues.

Ultimately, we like Mr. Baldessari's approach of including a true-up mechanism at Phase V to account for any additional revenues that have, or have not, materialized. By Phase V the projects will have been completed and Evansville will have actual flow data which can shed light on the amount of actual demand received from Gibson Water. We find a true-up process at Phase V to account for additional Gibson Water revenues is appropriate and should be approved.

(b) **Expenditure Adjustments.** Petitioner proposed 14 adjustments to various operating expenses in 2022, including, salaries and wages, employee benefits, contractual services, periodic maintenance, non-recurring items, additional sewer expenses and

inflation adjustments. Pet. Ex. No. 2, p. 20. Petitioner also proposed an additional operating expense adjustment in 2023 to add seven (7) new employees and an additional inflation adjustment. *Id.* at 28. The OUCC accepted a number of Petitioner's proposed adjustments and proposed additional adjustments. Pub. Ex. No. 1, p. 32. The OUCC ultimately recommended *pro forma* net operating expenses of \$17,236,898, which is \$869,539 less than that proposed by Evansville. *Id.* The difference in the parties' positions will be discussed in the following paragraphs.

(i) *Periodic Maintenance.* In its case-in-chief, petitioner proposed *pro forma* periodic maintenance expense of \$1,352,602, which includes adjustments for dredging, tanks, booster stations, traveling screens, leak detection and SCADA. Attachment DLB-1, p. 16. Ms. Stull did not accept Petitioner's proposed periodic maintenance expense and instead recommended *pro forma* period maintenance expense of \$884,537. Pub. Ex. No. 1, p. 35. Ms. Stull recommended adjustments to the same maintenance expenses included in Evansville's case-in chief. On rebuttal, Mr. Baldessari testified Petitioner accepted Ms. Stull's base periodic maintenance expenditures for all periodic maintenance expenses and agreed there were \$82,631 of periodic maintenance expenses for pump maintenance in the base period that should remain in expense. Pet. Ex. No. 1-R, p. 25. He further testified Petitioner accepted the OUCC's adjustments to traveling screens and SCADA periodic maintenance expense, but did not accept the adjustments as it relates to leak detection, dredging, tank maintenance and booster stations. Each of these will be discussed in turn in the following paragraphs.

With respect to leak detection, Evansville proposed \$282,334 of annual leak detection costs. Attachment DLB-1, p. 16. Ms. Stull testified Petitioner spent on average \$100,087 per year during the 2017-2020 period and therefore recommended *pro forma* leak detection periodic maintenance expense of \$100,087 in this Cause. Pub. Ex. No. 1, pp. 46-47. On rebuttal, Mr. Baldessari testified he disagreed with Ms. Stull's recommendation because Evansville has a contract (included as Attachment DLB-R4) for leak detection totaling \$763,029 to be spent over a 3-year period and, thus, will spend \$254,343 per year, on average, over the next three years. Pet. Ex. No. 1-R, p. 24. Therefore, Mr. Baldessari testified \$254,343 should be included in expenses.

We agree with Mr. Baldessari. Mr. Stull's analysis focused on historical expenditures over the last four years, not on actual expenditures to be incurred in the next three years. Evansville has an actual contract in place for \$763,029 in leak detection services to be performed over the next three years. Thus, we find this is the amount of actual expenses to be incurred and the \$254,343 annual leak detection expense proposed by Petitioner is appropriate and should be approved.

With respect to dredging, Evansville proposed \$328,475 for annual costs related to dredging of the intake structure. Attachment DLB-1, p. 16. Ms. Stull recommended *pro forma* dredging costs of \$215,440 based on a quote Evansville received for such services. Pub. Ex. No. 1, p. 42. On rebuttal, Mr. Baldessari testified he disagreed with Ms. Stull's recommendation because of the amount included is for the 2021 contract with the contractor (included as Attachment DLB-R5). Pet. Ex. No. 1-R, p. 24. Mr. Baldessari

testified the actual amounts to be incurred based on information from the contractor are: \$215,440 for 2021, \$218,276 for 2022, and \$221,116 for 2023 and in each year an additional \$5,000 for Morley and Associates for pre- and post-dredging survey. *Id.* He testified the resulting amount is \$226,116 and this amount should be included in *pro forma* expenses. *Id.*

Again, we agree with Mr. Baldessari. The OUCC's recommendation was based on historical expenses incurred and not on actual expenses to be incurred in the future. We find \$226,116 is the appropriate amount of *pro forma* dredging expense that should be included and this amount is approved.

With respect to tank maintenance, Evansville proposed \$528,570 of annual tank maintenance costs. Pet. Ex. No. 2, p. 23. The OUCC recommended annual tank maintenance costs of \$519,923 based on Ms. Stull's review of the tank maintenance contract and statements of work. Pub. Ex. No. 1, p. 42. On rebuttal, Mr. Baldessari testified he disagreed with the OUCC's recommendation because Petitioner included a tank maintenance contract in its case-in-chief which includes a yearly amount of \$528,570 for the 9 tanks included in the contract plus \$9,353 for the campground tank. Pet. Ex. No. 1-R, p. 25

For the reasons previously discussed, we again agree with Mr. Baldessari. Petitioner has an actual contract showing annual tank maintenance expense of \$537,923, and thus this is the amount of tank maintenance expense that should be approved.

With respect to booster stations, Ms. Stull testified she agreed with Petitioner's proposed booster station pump maintenance expense of \$41,274. Pub. Ex. No. 1, p. 44. However, she recommended the requested funds be placed into a restricted account to ensure the funds will be available when needed and used for the intended purpose. *Id.* On rebuttal, Mr. Baldessari testified he disagreed with the OUCC's recommendation because Petitioner already has a fund for periodic maintenance and does not believe it is necessary to set up additional funds to track individual periodic maintenance components separately. Pet. Ex. No. 1-R, p. 26.

We agree. There is no evidence in the record suggesting Evansville would spend the funds in a way other than for the intended purpose of conducting annual pump maintenance. Thus, we find it unnecessary to impose an additional administrative burden on Petitioner by forcing them to track this expense separately in a restricted account. Thus, we reject the OUCC's recommendation.

Based on these adjustments, Mr. Baldessari testified the resulting *pro forma* amount of periodic maintenance expense is \$1,150,100. *Id.* We find this is the appropriate amount of *pro forma* periodic maintenance expense that should be included it is approved.

(ii) *Forward Looking Test Year Employees.* Petitioner proposed to add expense for seven additional employees in 2023 and 2024. Pet. Ex. No. 2, p. 28. These new positions include: Accounting Clerk, Night Shift Supervisor Water Construction, Safety

Professional, Junior Surveyor, Operations and Maintenance Engineer, Administrative Assistant, Certified Master Electrician, Software Engineer and Control Systems Analyst. The OUCC accepted Petitioner's proposed \$156,669 *pro forma* expense for the Safety Professional and Administrative Positions, and recommended an increase in future test-year expense for the Accounting Clerk and Night Shift Supervisor positions of \$164,468. Pub. Ex. No. 2, p. 15. Otherwise, the OUCC rejected Petitioner's proposed expense for the additional employees. *Id.* at 8-15.

On rebuttal, Mr. Baldessari testified Petitioner is willing to accept the OUCC's recommendation to not include the Junior Surveyor, Certified Master Electrician, Software Engineer, Control System Analyst and Regulatory Compliance Specialist positions in the forward-looking test year expenses. Pet. Ex. No. 1-R, p. 29. With respect to the Night Shift Supervisor, Mr. Baldessari testified he disagreed with Mr. Malan's recommendation to split the salary 50/50 between water and sewer. *Id.* at 28. He testified the Night Shift Supervisor will perform water-only on call duties and therefore the salary should not be split as proposed by Mr. Malan. *Id.* With respect to the Operations and Maintenance Engineer position, Mr. Baldessari testified he disagreed with Mr. Malan's recommendation to exclude this position. *Id.* at 28-29. He testified Mr. Malan's position assumes this work is being performed through outside contractual services; however, this is an incorrect assumption as Petitioner does not currently have personnel inside or outside of the utility performing this role. *Id.* at 29. Mr. Baldessari testified the entire cost of the proposed salaries, wages and employee benefits associated with this position should be included. *Id.*

With respect to the Night Shift Supervisor, the record shows this position will perform water-only duties and thus we agree with Mr. Baldessari that the cost should not be split with the sewer utility. Further, there is no evidence to show the Operations and Maintenance Engineer position is being performed by an outside contractor, and thus, this position should also be approved.

(iii) *Non-Allowed Expenses.* Petitioner included a \$26,594 cost associated with fraud loss expense in its case-in-chief. Ms. Stull recommended eliminating this expense because she testified this type of cost is not recoverable for ratemaking purposes. Pub. Ex. No. 1, p. 48. On rebuttal, Mr. Baldessari testified he did not accept Ms. Stull's adjustment to disallow this expense. Pet. Ex. No. 1-R, p. 26. He testified Petitioner incurred fees in the base period associated with legal expenses resulting from a cybersecurity issue and Ms. Stull offered no explanation for why this expense should be disallowed. *Id.* Mr. Baldessari testified it is not uncommon for utilities the size of Evansville to face cybersecurity threats; he testified he expects this Commission would want to encourage utilities to deal with cyber security threats and would recognize the costs of doing so are legitimate. *Id.* at 27.

On cross examination, Mr. Baldessari clarified that the \$26,594 expense was for legal fees associated with the fraud event, and not the actual fraud loss itself. Tr. p. B-11. Further, in response to the Commission's Docket Entry Request dated October 22, 2021, Petitioner responded that while it did have protocols in place to deal with cybersecurity threats at the time the loss was incurred, it did not have an official cybersecurity policy in

place. Petitioner further responded it was in the process of developing such policy. So, while we agree with Mr. Baldessari that expenses incurred as a result of cybersecurity threats are legitimate, we believe Petitioner should adopt a formal policy to help mitigate these losses in the future. Ultimately, we find the \$26,594 is a legitimate expense that should be allowed; however, we would encourage Petitioner to work expeditiously to prepare a formal cybersecurity policy to help mitigate against future threats.

(iv) *PILT*. Petitioner proposed an annual revenue requirement for Payment In Lieu of Taxes (“PILT”) for each of the five proposed increases as follows: Phase I - \$3,590,000; Phase II - \$4,105,000; Phase III - \$4,445,000; Phase IV - \$4,785,000; and Phase V \$5,330,000. Attachment DLB-1, p. 27. Mr. Malan testified that while he agreed with the tax rate Petitioner used to calculate PILT and accepted the 25% factor used to exclude the value of the plant outside the municipal limits, he calculated a different PILT expense for each year due to the recommendations made by other OUCC witnesses. Pub. Ex. No. 2, p. 4. Mr. Malan presented the PILT calculations in Table 2 of his testimony.

On rebuttal, Mr. Baldessari testified Mr. Malan’s proposed calculations are understated and should be rejected. Pet. Ex. No. 1-R, pp. 27-28. He testified Mr. Malan’s proposed calculation included only about \$18,683,800 per year for added capital improvements and, thus, only a small portion of the proposed bond funded projects were included in his PILT calculations. *Id.* Mr. Baldessari testified Evansville’s PILT calculations assumes a portion of the proposed bond funded projects are included in the calculation and are reduced each year to better phase in the rate increase. *Id.* He testified Evansville’s PILT calculations are therefore better estimates of the future amounts and should be approved.

We agree with Mr. Baldessari. Based on our review of Mr. Malan’s estimates, we agree they appear to be understated and do not include a requisite amount of the bond funded projects. We also agree the PILT expense should be reduced to better align with Petitioner’s proposed rate increase. Thus, we find Petitioner’s PILT expense calculations are appropriate and should be included in the annual revenue requirement.

(v) *Debt Service*. The only issues separating the parties on debt service are the amount of the borrowing and the assumed interest rates for the new debt. Because we have approved Petitioner’s proposed bond issue as adjusted on rebuttal per the testimony of Mr. Baldessari, the first issue has already been resolved. As to the second, debt service for the new debt will not be reflected in rates until April 1, 2024, which will be after the true-up report following closing. As such, by the time rates actually reflect the interest rate, this issue will be moot. We therefore will accept Petitioner’s proposed interest rates. We find Petitioner’s proposed debt service requirements of \$17,527,945 for Phase I, \$17,529,307 for Phase II, \$19,672,870 for Phase III, \$22,674,908 for Phase IV and \$23,532,545 for Phase V.

(vi) *E&R*. In its case-in-chief, Evansville proposed E&R capital projects totaling \$49,027,864 to be phased-in at different amounts over the five-year period. Attachment DLB-1, p. 9. Ms. Stull testified the OUCC accepts the total proposed E&R

capital projects but recommended the annual E&R revenue requirement be based on a five-year average. Pub. Ex. No. 1, pp. 52-53. She recommended an E&R revenue requirement of \$9,805,580 (\$49,027,900/5 years). *Id.* at 53. On rebuttal, Mr. Baldessari testified he disagreed with Ms. Stull's adjustment to Evansville's proposed annual E&R allowance. Pet. Ex. No. 1-R, p. 19. He testified if the first step of the increase is to be deferred for one year as proposed by the OUCC, then the total E&R will need to be recovered over the remaining four steps. He stated that the entire \$49,027,864, net of the amounts that would be funded through existing rates until the test year, would need to be divided over 4 years, producing an annual E&R requirement of \$10,580,961.

We agree that Mr. Baldessari's calculation of Ms. Stull's proposed E&R revenue requirement, as opposed to calculating it based off a five-year average as the OUCC proposes, is the appropriate approach. We find this approach better aligns Petitioner's revenues and expenses and also provides a more management increase year-to-year for Evansville's customers. However, the amount that is to be approved for extensions and replacements ultimately depends on the structure of Petitioner's rate increase. As discussed in the following paragraph, because we find Petitioner's rate implementation structure as proposed in its case-in-chief is appropriate, we find the E&R revenue requirement as originally proposed in Petitioner's case-in-chief is appropriate and should be approved.

(c) **Rate Implementation.** Before we address Petitioner's base rate relief, we must first address Petitioner's proposed rate implementation structure. In this Cause, Petitioner is using a forward-looking test year for the 12-month period beginning April 1, 2023, which is not more than twenty-four (24) months after Evansville filed its petition. Petitioner has built its future test year from projected data, with the projection beginning at the close of the historic base period (twelve months ended September 30, 2020) through the beginning of the test year (the "link period") and then on throughout the forward looking test period. Petitioner is proposing to phase-in the rate increase over five phases, starting with a rate increase upon the issuances of an order or April 1, 2022, which is prior to the start of the Test Year. This first phase would include the effects of the projection through April 1, 2022. The second step would take effect on April 1, 2023, the beginning of the forward looking test period, and would fully reflect the test year results of operation. Step 3 would take effect at the close of the test period, April 1, 2024, and would adjust for part of the debt service associated with the proposed debt issuance in this cause as well as additional PILOT and extensions and replacement. The fourth and fifth phases would take effect one and two years thereafter respectively, and would reflect full phase in of the debt service, PILOT and extensions and replacement. Mr. Baldessari recognized that this proposal is unique in that Petitioner is requesting an increase prior to the commencement of the test period. He explained, however, that Evansville is not requesting authority to recover a cost before it is projected to be incurred – that the first step increase reflects only the effects of the projected data through April 1, 2022. Petitioner contends Ind. Code § 8-1-2-42.7 and Ind. Code 8-1.5-3-8 support raising rates in this fashion, as prohibiting a rate increase prior to the commencement of the Test Year would be inconsistent with Ind. Code § 8-1.5-3-8, which requires a municipality's rates and charges to be "nondiscriminatory, reasonable and just." Ind. Code § 8-1.5-3-8(b) "Reasonable and just" rates are defined as

the “rates and charges that produce sufficient revenue” to recover the statutory revenue requirement. *Id.* at (c). Pet. Ex. No. 2, pp. 7-8.

Petitioner contends that if this Commission approves Petitioner’s projection for purposes of setting rates as of April 1, 2023, we have necessarily approved the portion of Petitioner’s projection as of April 1, 2022. Petitioner argues that if its current rates are insufficient to recover the revenue requirement for the period of the projection as of April 1, 2022, then its current rates and charges do not meet the statutory definition of “reasonable and just.” *Id.*

The OUCC disagreed with Petitioner’s interpretation of Ind. Code §§ 8-1-2-42.7 and 8-1.5-3-8. The OUCC argued that while Ind. Code § 8-1-2-42.7 allows for temporary rates, it does not authorize temporary rates to go into effect before the date on which the projected data period begins. Pub. Ex. No. 1, p. 5. Ms. Stull testified Ind. Code § 8-1-2-42.7 authorized one rate increase to begin no sooner than the first day of the forward-looking test year. *Id.* Ms. Stull also recommended Petitioner’s rate increase be implemented in two phases. *Id.* at 1.

On rebuttal, Mr. Baldessari testified he disagreed with the OUCC’s reading of the two statutory sections. Pet. Ex. No. 1-R, p. 3. He testified Petitioner is not seeking to implement interim rates, but is instead proposing to implement its Phase I increase on April 1, 2022 (or upon issuance of the Order, whichever is last to occur), at which time its rates and charges will be insufficient to recover all the statutory required elements for reasonable and just rates. *Id.* at 3-4. Mr. Baldessari reiterated nothing in Section 42.7 prohibits a rate increase during the bridge data projection period and if the legislature intended no increases during this period of the two-year projection, they would have said so specifically. *Id.* at 4. He testified the OUCC is essentially asking the Commission to order a delay of rate relief the municipality has requested even though the Commission will have necessarily found that the current rates are insufficient to recover the revenue requirement. *Id.* Mr. Baldessari testified, however, Evansville is willing to defer the first increase until Phase II if that is the Commission’s preference, but he suspects customers would prefer two annual increases over one larger increase. *Id.*

Mr. Baldessari also testified Evansville does not agree with the OUCC’s proposed 2-step phase-in. *Id.* at 5. He testified the main reason Evansville proposed a 5-phase increase is to limit the annual increases to ease the burden on ratepayers. *Id.* He testified the OUCC’s proposal would result in much larger annual increases by condensing the rate increases into two phases. *Id.*

We appreciate Evansville’s willingness to defer the first increase until the beginning of the test year, but that is not the Commission’s preference. Instead of two relatively measured increases occurring one year apart, deferring the first increase will mean those first two increases will be combined into one increase that is roughly double the two smaller increases. Accordingly, our preference in the case of an extended forward looking test period is to authorize rates to be changed based upon the state of the projected data at the time. The parties’ conflicting interpretations of Ind. Code § 8-1-2-42.7 and 8-

1.5-3-8 require us to engage in an exercise of statutory interpretation of these two statutes. As expressed by Indiana courts, “the goal in statutory interpretation is to determine, give effect to, and implement the intent of the legislature as expressed in the plain language of the statutes.” *In the Matter of the Petition of the Town of Clear Lake, Indiana*, Cause No. 44925, 2017 WL 5655735, at *4 (Nov. 21, 2017). When interpreting a statute, “we are mindful of both what it does say and what it does not say.” *ESPN, Inc. v. Univ. of Notre Dame Police Dep’t*, 62 N.E.3d 1192, 1195-96 (Ind. 2016).

While Petitioner’s proposed rate implementation structure is unique, we find nothing in the plain language of Ind. Code § 8-1-2-42.7 which would prohibit a rate increase taking effect before the beginning of the test year. The statute does prohibit temporary rates going into effect before the projected period; however, the allowance for temporary rates under the statute is a statutory relief mechanism Petitioner may request in the event the Commission has failed to act on the rate request within 300 days. While the OUCC attempts to equate Petitioner’s request to a request for temporary rates, Petitioner’s request does not meet the requirements for temporary rates and Petitioner made it clear on rebuttal this is not what it is seeking.

In enacting Ind. Code § 8-1-2-42.7, the Legislature allowed for a use of a test year commencing two years beyond the filing of the petition thereby tacitly approving Petitioner’s ability to build its rate request based upon three years of projected data, the two years after the filing of the petition and the test year. We agree with Petitioner that if the Legislature had intended no increases during the period of the two-year projection period, it would have said so specifically.

Moreover, while Ind. Code § 8-1-2-42.7 does not specifically prohibit pre-Test Year rate increases, Ind. Code § 8-1.5-3-8 does specifically prohibit a municipality’s rates being unreasonable and unjust. For purposes of the statute, unreasonable and unjust rates are rates which fail to produce sufficient revenues to recover the statutory required elements enumerated in the statute. There is a similar provision for other utilities in Ind. Code §8-1-2-4, which requires rates and charges to be “reasonable and just” and declares unlawful “every unjust or unreasonable charge.” We find that if a utility presents a rate case based upon a forward looking test period commencing twenty-four months after the filing of the petition and that if the projected data demonstrates the utility will be unable to recover its lawful revenue requirement before the commencement of the test period, then rates must be changed before the beginning of the test period. We further find that such an interpretation is consistent with the infrastructure policy that we are “to use all practicable means and measures, including financial and technical assistance, in a manner calculated to create and maintain conditions under which utilities plan for and invest in infrastructure necessary for operation and maintenance while protecting the affordability of utility services for present and future generations.” Ind. Code §8-1-2-0.5. By using the forward looking test period in the fashion proposed by Evansville, Evansville is able to spread out its increase over a period of multiple years in more measured fashion, helping maintain affordability. The record shows that based on Petitioner’s projections, as of April 1, 2022, Petitioner’s current rates will be insufficient to recover “all the legal and other necessary expenses incident to the operation of the utility” as required by Ind. Code § 8-1.5-3-8. This

is prohibited under Ind. Code § 8-1.5-3-8 and thus we find Petitioner's request to implement Phase I upon the issuance of any order on April 1, 2022, is appropriate and should be approved.

We also reject the OUCC's recommendation to phase-in the rate increase over two phases instead of five as originally proposed by Petitioner. Petitioner's stated purpose for implementing the rate increase over five phases is to limit the annual increases in an effort to ease the burden on ratepayers. Pet. Ex. No. 1-R, p. 5. The OUCC raised concerns in its testimony regarding the affordability of Evansville's rates. While we understand these concerns, Evansville's Water Treatment Plant is over 100 years old and in desperate need of replacement. Evansville's proposed phase-in structure accomplishes the goal of building the new Water Treatment Plant, while also minimizing rate impact on customers to the greatest extent possible. We find Evansville's proposal to phase-in the rate increase over five-phases is appropriate and should be approved.

(d) **Base Rate Relief.** We find that Petitioner's revenue requirements are as proposed by Petitioner on rebuttal which are summarized below:

	<u>Phase I</u>	<u>Phase II</u>	<u>Phase III</u>	<u>Phase IV</u>	<u>Phase V</u>
Total Operation and Maintenance Expense	\$30,543,967	\$31,611,014	\$31,649,499	\$31,687,181	\$31,718,959
Payment In Lieu of Taxes	3,590,000	4,105,000	4,445,000	4,785,000	5,330,000
Debt Service	17,527,945	17,529,307	19,672,870	22,674,908	23,532,545
Debt Service Reserve	385,651	1,200,720	1,200,720	1,200,720	1,200,720
Allowance for Capital Improvements	<u>9,420,000</u>	<u>9,600,000</u>	<u>9,980,000</u>	<u>9,485,000</u>	<u>10,542,900</u>
Total Revenue Requirement	61,429,953	63,969,716	66,833,279	69,680,317	72,140,854
Less Other Income and Sewer Portion of General Expenses and Capacity Payments from Wholesalers	<u>14,198,056</u>	<u>14,649,232</u>	<u>14,649,232</u>	<u>14,649,232</u>	<u>14,649,232</u>
Net Revenue Requirement	<u>\$47,231,897</u>	<u>\$49,320,484</u>	<u>\$52,184,047</u>	<u>\$55,031,085</u>	<u>\$57,491,622</u>
Total Annual Operating Revenues	<u>\$44,515,954</u>	<u>\$46,519,052</u>	<u>\$49,396,809</u>	<u>\$52,298,857</u>	<u>\$55,183,577</u>
Additional Revenues Required	<u>\$2,753,553</u>	<u>\$2,877,757</u>	<u>\$2,902,048</u>	<u>\$2,884,720</u>	<u>\$2,492,315</u>
Percentage Increase Requested	<u>6.19%</u>	<u>6.19%</u>	<u>5.87%</u>	<u>5.52%</u>	<u>4.42%</u>

Based on the evidence, the Commission finds that Petitioner's current rates and charges are insufficient to satisfy Petitioner's annual pro forma net revenue requirements. As shown above, Petitioner's total annual operating revenues for Phase I, Phase II, Phase III, Phase IV and Phase V are \$44,515,954, \$46,519,052, \$49,396,809, \$52,298,857 and \$55,183,477, respectively. Accordingly, Petitioner's existing rates are insufficient to recover Petitioner's revenue requirement and should be increased to produce an additional \$2,753,553, \$2,877,757, \$2,902,048, \$2,884,720

and \$2,492,315 (each inclusive of the prior phase increase) in annual operating revenues for Phase I, Phase II, Phase III, Phase IV and Phase V, respectively.

(e) **True-Up Report.** We find that Evansville should true up its rates to reflect the actual debt service after closing on its bonds. Based upon the recommendation of OUCC Witness Dellinger, Petitioner should file a report within thirty (30) days of closing on each of its long term debt issuances authorized herein, explaining the terms of the new loan, the amount of debt service reserve, and an itemized account of issuance costs, along with a revised tariff, amortization schedule and rate impact. The OUCC should have fourteen days after service of the true-up report to challenge the proposed true-up, and Evansville should have fourteen days to respond to the OUCC's response. Further, we find that once Petitioner's debt service reserve has been fully funded, the revenue requirement associated with debt service reserve should be placed in a restricted account to be used to pre-fund future debt service reserves or future borrowings.

There is a further true-up report required by our prior findings. As noted, Petitioner has an agreement with Gibson Water which has a three-year revenue offset. OUCC Attachment MAS-3. When the true-up is performed pursuant to that agreement, Evansville shall also file such true-up report with the Commission, along with a new tariff and supporting workpaper, which will adjust Evansville's rates to reflect Gibson's actual average usage over the three-year True-Up Period under said agreement.

D. Status of Refresh Evansville. Mr. Parks testified that Evansville is behind on its water main replacement program approved in prior cases and he recommended that a capital improvements reconciliation be submitted annually to the Commission. Pub. Ex. No. 4, pp. 41, 43-44. Ms. Stull testified that there remain capital improvement projects that were included in the extensions and replacements budget in prior cases that have not yet been completed. Pub. Ex. No. 1, p. 13. On rebuttal, Mr. Labitzke responded that Ms. Stull's testimony does not tell the full story in that the main replacement program is based upon prioritization. During the period of the program, other projects can and will arise in priority that had not been previously included in funding. The only money that has not been encumbered from Cause No. 44760 is related to engineering for the water treatment plant proposed in this case and will be spent in connection therewith. And with respect to the last case (Cause No. 45073), he testified that Evansville is on pace to complete the water main replacement program in 2022. Pet. Ex. No. 3-R, pp. 12-13. Evansville did not receive bond proceeds until June, 2019, and if one looks at the full three year period from June 2019 to June 2022, Evansville is on pace to replace 14.7 miles of main per year, only 0.3 miles per year less than was proposed in Cause No. 45073. Pet. Ex. No. 3, p. 4.

We followed up on Mr. Labitzke's testimony that Evansville is on pace to complete the water main replacement program approved in Cause No. 45073 in June 2022 with a docket entry question seeking the amount of bond proceeds remaining to be used. Pet. Ex. No. 6, Question 6. On cross examination, Mr. Labitzke clarified that as of September 30, 2021, there remains \$80 million in cash but that \$40 million of that is encumbered, meaning it is tied to contracts with contractors or design consultants. Further, the remaining \$40 million will be similarly encumbered by the end of 2022. There will be no new projects to contract by the end of 2022. Tr., p. B-23. We are satisfied that Evansville is diligently managing its Refresh Evansville Program, and that the funding provided in Cause Nos. 44760 and 45073 is being timely invested in infrastructure

replacement per the original projections. We find that the additional reporting requested by Mr. Parks is unnecessary.

E. Confidentiality. On May 10, 2021, Evansville filed a Motion for Protection and Nondisclosure of Confidential and Proprietary Information (“Motion”), which was supported by the Affidavits of Michael Labitzke and Douglas L. Baldessari, showing that certain information to be submitted to the Commission contained trade secret information that is not known or readily available to persons outside of Evansville. The Presiding Officers issued a Docket Entry on June 8, 2021, finding that this information should be held confidential on a preliminary basis, after which the information was submitted under seal. After reviewing the information, we find this information qualifies as confidential trade secret information pursuant to Ind. Code §§ 5-14-3-4 and 24-2-3-2. This information shall be held as confidential and protected from public access and disclosure by the Commission and is exempted from the public access requirements contained in Ind. Code ch. 5-14-3 and Ind. Code § 8-1-2-29.

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

1. Petitioner is authorized to increase its rates and charges for water service, across-the-board, in five Phases with the increase for Phase I constituting an 6.19% % increase in order to increase annual operating revenues by \$ \$2,753,553, for Phase II constituting a further 6.19% increase in order to increase additional annual operating revenues by \$2,877,757, for Phase III constituting a further 5.87% increase in order to increase additional annual operating revenues by \$2,902,048, for Phase IV constituting a further 5.52% increase in order to increase additional annual operating revenues by \$2,884,720 and for Phase V constituting a further 4.52% increase in order to increase additional annual operating revenues by \$2,492,315. Phase I shall take effect following approval, and Phases II, III, IV and V shall take effect April 1, 2023, 2024, 2025 and 2026, respectively.

2. Petitioner is granted a Certificate of Authority to issue additional long-term debt in one or more issues to the SRF or pursuant to competitive sale or private placement at or below competitive market rates and in principle amount not to exceed \$235,705,000 million as approved herein. This Order shall be the sole evidence of Petitioner’s certificate. If Petitioner is not required to construct the residuals management facility, such financing authority shall be reduced by \$30,000,000.

3. Petitioner shall file under this Cause new schedules of rates and charges with the Water/Wastewater Division of the Commission on the basis set forth above. For Phase I, Petitioner’s new schedules of rates and charges shall be effective upon filing and after approval by the Water/Wastewater Division. The Phase II, Phase III, Phase IV and Phase V schedules shall then take effect one to four years respectively after such approval.

4. Petitioner shall file the true-up reports as provided in Finding Paragraph C(e) .

5. 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 Treasury of the State of Indiana, through the Secretary of the Commission:

Commission Charges:	\$
OUCG Charges:	\$
Legal Advertising Charges:	\$
Total:	\$

6. 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.

7. This Order shall be effective on and 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