VERIFIED REBUTTAL TESTIMONY OF JENNIFER Z. WILSON
ON BEHALF OF THE GRANGER WATER UTILITY LLC

Cause No. 45568

INTRODUCTION

1. Q PLEASE STATE YOUR NAME AND ON WHOSE BEHALF, YOU ARE TESTIFYING.

A My name is Jennifer Z. Wilson, and I am testifying on behalf of the Petitioner, Granger Water Utility LLC ("Petitioner" or "Granger Water").

2. Q ARE YOU THE SAME JENNIFER Z. WILSON WHO SUBMITTED DIRECT TESTIMONY IN THIS CAUSE?

A Yes.

3. Q WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A The purpose of my testimony is to respond to statements made by Ms. Carla Sullivan and Mr. Shawn Dellinger on behalf of the Indiana Office of Utility Consumer Counselor ("OUCC") regarding a variety of topics outlined below.

CUSTOMER GROWTH

4. Q DOES MS. SULLIVAN'S ANALYSIS OF CUSTOMER GROWTH LACK ANY KEY INFORMATION?

A Yes, Ms. Sullivan states that Granger Water's customer base cannot grow beyond 229 EDUs without some change in ownership of the land currently owned by Mr. Blum." While Ms. Sullivan acknowledges The Village Development LLC ("Village Development") has an option, which as explained by Mr. Matthews is a right of first refusal, to purchase the additional 75 acres to grow beyond 229 EDUs (see page 6, line 6), she fails to account for the exercise of that right of first refusal when evaluating customer growth.

5. Q DOES MS. SULLIVAN PROVIDE ANY INDEPENDENT ANALYSIS OR EVIDENCE THAT THE PETITIONER'S CUSTOMER GROWTH ASSUMPTIONS ARE OVERSTATED.

A Yes, however, her analysis is incomplete. Ms. Sullivan references the Village Development current ownership of land for 229 lots as a rationale that the Petitioner's assumed 360 EDUs by year 10 is an unreasonable assumption. The maximum number of EDUs is only relevant to growth rate in so far as the Petitioner reaches the maximum number. Ms. Sullivan does not account for Village Development's right of first refusal to purchase additional land to expand possible EDUs well beyond 360; therefore, I consider her analysis to be flawed.

6. Q MS. SULLIVAN REFERENCES A FINANCIAL CAPACITY REVIEW PERFORMED BY MS. DANA LYNN OF THE IURC. DO YOU THINK THIS ANALYSIS UNDERMINES THE GROWTH ASSUMPTIONS USED BY THE PETITIONER?

A No. Ms. Lynn cited two issues concerning the growth rate: (1) the assumption that homes come online to a water utility on January 1 of each year is unrealistic; and (2) IDEM staff found no support that a 10% growth rate is reasonable. I will discuss how neither concern undermines the Petitioner's growth assumptions in my responses to the following questions.

7. Q WHY WAS THE ASSUMPTION MADE IN THE PETITIONER'S CASE-IN-CHIEF THAT ALL INCREMENTAL GROWTH FOR A GIVEN YEAR IS PRESENT FOR THE ENTIRE YEAR?

A All financial projections employ a variety of assumptions that may or may not be realized. When building financial models, a balance must be struck between over-engineering those assumptions and the need for understandable inputs and variables. The OUCC commonly engages in these types of projections when it argues for customer growth adjustments in rate cases by assuming the customer growth occurs at the beginning of each month. In Granger Water's case, the assumption of all new growth being present at the beginning of an operating year provides a clear expectation for what growth must be realized. It suggests that growth needs to be realized prior to the start of a year to achieve the projected results. Further, the analysis in Attachment JZW-1 does

not correlate Year 1-10 to a specific calendar year, which means that Granger Water will commence Year 1 (theoretically according to the model) at the time it hits 38 customers. Cash flow effects of any timing differences will be managed by the owners.

8. Q DID IDEM STAFF FIND EVIDENCE AGAINST THE GROWTH ASSUMPTIONS USED BY THE WSMP?

A No. IDEM staff did not find evidence against the growth assumptions. Moreover, the Commission's Ms. Lynn, in her review of the WSMP, indicated that, "staff found no support that a 10% growth rate is reasonable," not that Commission staff found evidence proving the assumption was unreasonable. The takeaway here is that there is that neither IDEM nor Commission staff found evidence, either in support of the assumption or in opposition to the assumption. It is, after all, an assumption. In the absence of evidence to either prove or disprove assumptions, I find it reasonable to defer to Mr. Matthews who has made a career in real estate development in the region in which Granger Water is located and to Petitioner's witness Steve Smith, who is one of the top real estate agents in St. Joseph County and is intimately familiar with the Granger area.

9. Q WHY DON'T THE CUSTOMER GROWTH PROJECTIONS IN THE WSMP MATCH THE PROJECTIONS USED IN THIS CAUSE?

A Mr. Matthews included 24 customers per year in the WSMP based on estimated growth assumptions used when obtaining financing for the water plant. Mr. Matthews engaged an independent firm to perform a feasibility study in support of the estimate. Please note

that this report was not a reflection of the possible growth of the development, but rather of whether the assumed 24 customers per year was feasible. As with most projections, as more analysis is performed, the projections are reevaluated and refined. In this case, after further planning and pre-marketing activities and evaluation of changing market conditions, Mr. Matthews revised the growth assumption to what was included in Granger Water's case-in-chief.

ALTERNATIVE REGULATORY PROCEDURES

10. Q DID GRANGER WATER REQUEST PRE-APPROVAL OF FUTURE RATE INCREASES USING ARP?

A No, Ms. Sullivan seems to think so based on the question on page 12, line 1, of her testimony. Granger Water, however, did not include that request in its petition. Ms. Sullivan further contends that Granger Water is not eligible for the ARP because she makes the unsupported argument that this is not a general rate case. Ms. Sullivan cites no case for her position and merely says the lack of a test year and the inability for the OUCC to confirm expenses (even though she claims that Granger Water will operate at a loss for 10 years) preclude application of the ARP at page 12, lines 4-6. Granger Water would submit all requests for rate increases under ARP in accordance with Commission guidelines. Ms. Sullivan has presented no persuasive evidence that Granger Water cannot use the Commission's ARP process.

11. Q WHY DID GRANGER WATER INCLUDE INCREASES UNDER ARP IN ITS PROJECTED FINANCIALS?

A Granger Water uses expenses with inflationary increases in projecting its financials. It was prudent to match increased expenses with increased revenues to show the best match in future revenue requirements.

REGULATORY ASSET

12. Q DO YOU AGREE WITH MS. SULLIVAN'S CRITICISMS OF GRANGER WATER RECORDING ITS NET OPERATING LOSSES AS A REGULATORY ASSET?

A No. It is precisely the fact that Granger Water is a start-up utility that makes it reasonable to record operating losses as regulatory asset. Exorbitant rates would be required for Granger Water to recover its full revenue requirement and would stymie future customer growth for Granger Water. The owners of Granger Water are willing to charge an amount less than the rates that could be justified so as to not put undue burden on the first customers and deter future growth. In other words, the owners are willing to shoulder the risk and the loss anticipated in the first years of operation for the success of the utility in future years. By creating a regulatory asset, the owners will have the opportunity to present the regulatory asset for recovery in the future. This potential for recovery compensates the owners for undertaking the risk and loss at the start-up utility.

13. Q DOES CREATING A REGULATORY ASSET CREATE AN INTERGENERATIONAL RATE INEQUITY?

A No. In the context of a start-up utility, the initial customers and later customers share an interdependent relationship. The initial customers require later customers to join to spread out fixed costs of the utility over a larger customer base. The later customers in turn require the initial customers to express interest in the utility at a baseline to get the utility off the ground. This is particularly true in the context of Granger, Indiana, where the majority of residents are supplied by well water, and thus well water can be considered typical. This interdependency creates a justification for the regulatory asset. True, later customers will pay the operating expenses incurred by early customers, but those later customers needed the initial customers to establish water service to start the momentum of the utility.

14. Q DO YOU THINK MS. SULLIVAN'S INTERPRETATION OF THE RISKS AND REWARDS OF A START-UP UTILITY ARE VALID?

A No. In a generic business, the owner accepts the risks and rewards of owning that business. This logic does not carry forward into the ownership of a regulated utility as the return on investment is regulated. In other words, there is a finite amount of reward (due to the regulation) that can be earned through ownership of the utility. Granger Water is merely requesting the Commission to allow it the opportunity (Granger Water did not request pre-approval to recover the regulatory asset, just authority to record operating losses as a regulatory asset to present in a future rate case) to recover some

benefit, which would be well short of the full return that could be achieved, when the utility has reached a more mature customer base to recoup the losses incurred during the early years of operations.

FEDERAL AND STATE INCOME TAXES & SYSTEM DEVELOPMENT CHARGES

15. Q WHY DID GRANGER WATER EXCLUDE FEDERAL AND STATE INCOME TAXES ON ITS PRO FORMA INCOME STATEMENT, WHILE INCLUDING A GROSS-UP FACTOR ON THE SCHEDULE OF ALLOWABLE NET OPERATING INCOME?

A As has been noted by Ms. Sullivan, Granger Water anticipates operating at a loss during the projected period, and therefore, will not incur any income tax expense. I nonetheless include a gross-up factor on the Schedule of Allowable Net Operating Income to calculate the "Rate Increase Required" were the Petitioner to seek full recovery of its revenue requirements. Thus, if the Petitioner were to seek a full recovery, it would incur income taxes. While seeking full recovery is not the Petitioner's intention during the early years of the utility, federal and state taxes will be a consideration in future rate making of the utility.

16. Q HOW DO YOU RESPOND TO MS. SULLIVAN'S CONTENTION THAT SYSTEM DEVELOPMENT CHARGES SHOULD NOT BE GROSSED UP FOR INCOME TAXES?

A I agree that the Utility does not have need to collect a provision for income taxes during the initial years of growth since it is expected to experience a loss. While Granger Water, however, could justify a system development charge of nearly $7,200, the Petitioner proposed a charge of $1,750 in the interest of not curtailing growth. The income taxes were merely a math function of that value to result in a net system development charge of $1,015. The Petitioner would not make a distinction between the system development charge and the associated tax if no tax liability was anticipated and would seek to count the full $1,750 as a system development charge. Granger Water wishes to keep the same charge for each customer no matter if the utility is running at a gain or loss. Thus, the requested charge is far below what Granger Water can justify.

17. Q DOES THE INFRASTRUCTURE BILL, AS DEFINED BY MS. SULLIVAN, CHANGE GRANGER WATER'S POSITION ON TREATMENT OF SYSTEM DEVELOPMENT CHARGES?

A No. The Infrastructure Bill has not yet been enacted, and it would not be prudent for Granger Water to modify its request on merely an expectation of legislation being passed.

18. Q IF THE INFRASTRUCTURE BILL, AS DEFINED BY MS. SULLIVAN, IS PASSED, HOW WOULD THAT AFFECT GRANGER WATER'S TREATMENT OF SYSTEM DEVELOPMENT CHARGES AND PLANNED ARRANGEMENTS FOR ITS DISTRIBUTION SYSTEM.

A While I'm not able to comment on specifics, as the Infrastructure Bill has yet to be enacted, generally, Granger Water would evaluate the legislation and use accounting treatment that would result in the most favorable income tax outcomes for its owners and rate payers. This includes evaluating the Petitioner's proposed strategy of purchasing distribution assets from the Village Development rather than counting the assets as a contribution in aid of construction.

Additionally, if (1) legislation passes that exempts contributions in aid of construction ("CIAC"), such as Granger Water's proposed system development charges, from taxable income; and (2) the regulations governing CIAC allow CIAC to be used to reimburse prior capital expenditures, Granger Water requests that it be afforded such treatment. I note that the Internal Revenue Service regulation (26 C.F.R. § 1.118-1 and -2; specifically 26 C.F.R. § 1.118-2(b)(4)) authorizing such treatment is still in force and I attach it as Attachment JZW-2.

19. Q HAS THE COMMISSION APPROVED OTHER UTILITIES REIMBURSING ITSELF FOR PRIOR CAPITAL EXPENDITURES FROM SYSTEM DEVELOPMENT CHARGES?

A Yes. In Cause No. 43435, the Commission approved Hamilton Southeastern Utilities, Inc. ("HSE") use of CIAC funds to "reimburse the utility for facilities placed into service prior to the receipt of the CIAC…." (*Hamilton Southeastern Utilities*, 2009 WL 439949 at *11 (Cause No. 43435 Ind. U.R.C. Feb. 11, 2009)). The Commission made this determination at the request of HSE because at the time of the Order in Cause No. 43435,

for tax purposes, the Commission's approval was required under 26 C.F.R. § 1.118-2(b)(4) so that HSE wouldn't be required to pay taxes on the receipt of CIAC if used as a reimbursement for capital expenditures already placed in service. Because of changes in the law due to the Tax Cuts and Jobs Act, Granger Water is currently required to pay tax on CIAC. To the extent that the tax law changes as a result of the Infrastructure Bill Ms. Sullivan referenced, Granger Water requests such a determination.

Ultimately, such a request mirrors Granger Water's request to use system development charges to pay operating expenses. It's just a timing issue of when the plant was placed in service and when the CIAC is received. Here, because Granger Water's most intensive capital needs were required before any CIAC was received, it makes complete sense that it should be afforded such treatment. As the Commission stated in Cause No. 43435, "The Commission does not typically require preapproval before a utility may expend CIAC on plant placed in service before the CIAC was collected," (*Id.*) which inherently acknowledges that CIAC can be used in the manner Granger Water proposes. The treatment requested by Granger Water is similar to that which HSE requested in Cause No. 43435 in that Granger Water requests to use system development charges, which the utility will books as CIAC, as a reimbursement of the funds originally expended to construct the plant, if the tax law is changed to allow such treatment and such determination is required.

20. Q DO YOU AGREE WITH MS. SULLIVAN'S STATEMENT THAT IF SYSTEM DEVELOPMENT CHARGES ARE USED TO PAY OPERATING EXPENSES, THEY MUST ALSO BE COUNTED AS OPERATING REVENUE? (SEE LINE 5 OF PAGE 18 OF MS. SULLIVAN'S DIRECT TESTIMONY).

A No. The use of a receipt does not determine its accounting treatment. For example, interest income is often required to be used as an offset to a utility's revenue requirement by the OUCC, however, NARUC USOA for Class B Water Utilities classifies interest income as "other income." Likewise, if a utility issued short term debt to pay for operating expenses, it would not be accounted for as operating revenues instead of a liability.

21. Q DID MS. SULLIVAN APPROPRIATELY CHARACTERIZE THE PETITIONER'S REQUEST RELATED TO SYSTEM DEVELOPMENT CHARGES?

A No. Ms. Sullivan states that the Petitioner requested Commission approval to treat system development charges as operating revenue, which is incorrect. The Petitioner requested "to the extent that the Commission requires the use of System Development Charges to pay for operating expenses, Granger Water requests such approval (Page 6, Line 12-14 of my direct testimony).

22. Q HOW DOES CONSIDERING SYSTEM DEVELOPMENT CHARGES AS USABLE FOR OPERATING EXPENSES OR AS A REIMBURSEMENT OF PRIOR CAPITAL OUTLAYS AFFECT THE ACCOUNTING OF SYSTEM DEVELOPMENT CHARGES?

A Granger Water used equity and debt sources for initial construction of water plant. Counting system development charges as reimbursements effectively realigns the capital structure to be split between debt, equity, and CIAC, rather than just debt and equity, while allowing system development charges cash to pay operating expenses reduces any required equity contributions, thus having the same effect on Granger Water's capital structure. Since Granger Water is reducing its rate base as it collects system development charges (either through reimbursement or foregone capital contributions), it is reasonable for Granger Water to use those funds as it sees fit. By applying the system development charges as a reimbursement of capital expenditures already made should the tax law allow it, Granger Water would not be required to maintain the cash collected from the system development charges in a restricted account. Likewise, if Granger Water wants to apply system development charge funds to cash flow operating expenses in early years of operations, it reduces the required equity contributions required by the owners of Granger Water.

23. Q WHY SHOULD THE COMMISSION GRANT APPROVAL, IF REQUIRED, OF THIS TREATMENT FOR SYSTEM DEVELOPMENT CHARGES?

A The capital intensive nature of water utilities as well as high fixed costs create high barriers of entry to starting a utility, which in turn prevents rural customers from receiving water service from a public utility. The mechanism of treating system development charges as a reimbursement of prior capital outlays or to be used for operating expenses enables owners of start-up utilities to better manage cashflow during the initial lean operating revenue years.

24. Q WHAT IS THE FINANCIAL EFFECT ON GRANGER WATER IF THE COMMISSION DENIES THE TREATMENT OF SYSTEM DEVELOPMENT CHARGES AS A REIMBURSEMENT OR FOR OPERATING EXPENSES?

A While Granger Water's flexibility in using system development charges would be constrained, there is very limited financial effect on the Utility. If Granger Water is required to hold system development charges in a restricted account, it will use such funds to pay for debt service on the water treatment plant loan or hold the funds for the future capital outlay. The American Water Works Association Manual M1 Principles of Water Rates, Fees, and Charges, 7th Edition ("Manual M1") cites "making debt-service payments on past growth-related debt" as one use of system development charge receipts (page 341 of Manual M1).

In the model presented in Attachment JZW-1, owner contributions from lot sales that otherwise would have been used to pay for debt service would be redirected to offset operating losses. By the time the loan is repaid from the combination of system development charges and equity contributions to total the curtailment, Granger Water

will have established a sufficient customer base to create positive operating cash flow. Operating cashflows are projected to be positive in Year 4 in the projections included in my direct testimony, the same year the treatment plant debt is anticipated to be repaid, and Year 5 by the OUCC in its projected statements. Any system development charges collected after repayment of the treatment plant loan could be restricted for capital improvements, including the expansion of the treatment plant. Therefore, there would only be minimal timing differences in cash flow were the Commission to deny Granger Water's requests related to treatment of system development charges.

The positive operating cash flows after four or five years highlights an important point – for all of the OUCC's complaints that Granger Water is "another small utility" incurring operating losses, Granger Water has presented a model that mitigates as much risk as possible: the model (1) achieves positive cashflow within five years even by the OUCC's model; (2) eliminates debt quickly, which is a source of significant risk for smaller utilities; and (3) is based on reasonable growth rate projections according to those with the best knowledge of the local real estate market (i.e., Mr. Matthews and Mr. Smith).

25. Q DO YOU AGREE WITH MS. SULLIVAN'S IMPLICATION THAT THE MAIN EXTENSION RULES SET FORTH IN 170 IAC 6-1.5 WILL NOT ALLOW GRANGER WATER TO PURCHASE DISTRIBUTION ASSETS FROM VILLAGE DEVELOPMENT?

A No. The Commission's main extension rules for water utilities, 170 IAC 6-1.5, address circumstances in which an applicant requests extension of water service. The rules are intended as a protection for the applicant and the utility in mediating extension of service. This administrative code provision should not be imposed on Granger Water due do its shared relationship with Village Development. Allowing Granger Water to purchase distribution system assets instead of receiving them as a contribution enables the Petitioner to incur less tax liability under the current tax law that would only add to operating losses. That the Petitioner will not include distribution assets in its rate base neutralizes this effect on rate payers when a return on investment can be included in the revenue requirements. I note that if the Infrastructure Bill is passed and enables Village Development to donate distribution system assets to Granger Water without a tax effect, Granger Water would then donate the distribution system. Again, the distribution system loan is solely a tax avoidance strategy that benefits both rate payers and owners of Granger Water.

FLAT RATE

26. Q DOES THE INDIANA CODE PROHIBIT PUBLIC UTILITIES FROM CHARGING FLAT RATES TO ITS CUSTOMERS?

A No, I do not believe so.

27. Q DO YOU AGREE WITH MS. LYNN'S STATEMENT CITED BY THE OUCC THAT FLAT MONTHLY RATES IS A RATE STRUCTURE THAT HAS BEEN REGARDED AS "A THING OF THE PAST"?

A No. In fact, on March 17, 2021, the Commission approved Wells Homeowners Association, Inc. to charge flat rates to its customers in Cause 45440 U.

28. Q ARE THERE MERITS TO A FLAT RATE STRUCTURE?

A Yes. The Manual M1 discusses the merits of a flat-rate structure, particularly in the context of a start-up utility. The Manual M1 states on page 149, "One of the more common means of stabilizing revenues from water rates is increasing the portion of rate revenue recoved by fixed charges…" Predictability of revenues is a reasonable basis for a flat rate structure, particularly with Granger Water's willingness to install meters when the customer base is more established. This also does not saddle the utility with unneeded infrastructure costs in the early years and recognizes that once the utility becomes more mature, the meters can be installed and not have their useful life "wasted" during the period when revenue stability was at its peak importance.

DISTRIBUTION SYSTEM LOAN

29. Q DO YOU AGREE WITH MS. SULLIVAN'S CHARACTERIZATION OF DATA REQUEST 5-10 AND THE PETITIONER'S RESPONSE?

A No. Ms. Sullivan states that Data Request 5-10 concerns the distribution system. The actual question reads, "For what number of years does Granger Water Utility LLC

intend to forgo its full authorized return on and return of its investment in rate base?" The Petitioner's response relates to its rate base excluding distribution system assets, which I emphasized in response to Question 19 of my direct testimony. Granger Water is not certain when it will seek a full return on its investment on rate base; however, Granger Water is certain it will not include distribution system assets in calculating its rate base.

30. Q DID MR. DELLINGER INCLUDE DISTRIBUTION SYSTEM ASSETS WITHIN RATE BASE FOR PURPOSES OF CALCULATING GRANGER WATER'S FUTURE RATES ON PAGE 16 OF HIS DIRECT TESTIMONY?

A Yes, he did, and his calculation is not an accurate assessment of how Granger Water has requested treatment of the distribution system assets. Again, Granger Water has agreed to forego including the distribution system in rate base.

31. Q DOES GRANGER WATER'S PROPOSED PURCHASE OF DISTRIBUTION SYSTEM ASSETS AFFECT RATE BASE?

A No. As I've previously testified, Granger Water will not include purchased distribution assets in its calculation of rate base.

WATER PLANT LOAN

32. Q DO YOU AGREE WITH MS. SULLIVAN'S STATEMENT THAT "THE OWNERS ARE REQUIRED TO CONTRIBUTE $1,481,397 BEFORE THE

MATURITY DATE REGARDLESS OF HOW MANY LOTS ARE SOLD BY VILLAGE DEVELOPMENT"?

A No. While the loan does have a maturity date of March 31, 2024, Granger Water anticipates that the terms of the loan may be extended beyond March 31, 2024, pending results of development. Were development to not proceed according to lending bank's expectations, the loan would be renegotiated to a principal and interest loan over a longer period of time. This is a typical financing arrangement in the commercial lending environment as banks typically want a performing loan rather than acquisition of the underlying assets.

FINANCIAL CAPACITY

33. Q ON PAGE 22 OF HER DIRECT TESTIMONY, MS. SULLIVAN STATES THAT IF THE OWNERS DECIDE TO CEASE CONTRIBUTIONS OR VILLAGE DEVELOPMENT IS UNABLE TO SELL THE ANTICIPATED LOTS, "THE ONGOING FINANCIAL VIABILITY OF THE UTILITY FURTHER DECREASES." DO YOU AGREE?

A Yes and no. Ms. Sullivan is correct that Granger Water will need customer growth to sustain operations; however, her analysis is incomplete in evaluating the effect of customer growth and owner contributions to the financial viability of Granger Water.

34. Q HOW DOES MS. SULLIVAN MISCHARACTERTIZE GRANGER WATER'S RELIANCE ON OWNER CONTRIBUTIONS AND CUSTOMER GROWTH?

A Ms. Sullivan doesn't recognize the relationship between customer growth assumptions and owner contributions, which is a key factor in evaluating the financial viability of Granger Water. Ms. Sullivan points to the $5.1 million of owner contributions over the next 10 years, but does not recognize the nuance that such contributions are either predicated on reasonable assumptions or not required *unless customer growth is realized*. Owner contributions consist of (1) initial cash contributions, (2) curtailments from lot sales, (3) capital reserve contributions, and (4) distribution system loan contributions. Initial cash contributions have already been made, and therefore, are not relevant to the financial viability of Granger Water. Regarding (2), Ms. Sullivan correctly states that curtailment amounts from lot sales totaling $9,259 will be contributed to Granger Water for each lot sold for the purpose of repaying the treatment plant loan. Given an interest reserve was funded through proceeds of the loan, only 160 lots need to be sold to repay the loan. This figure is achieved in Year 7 of the OUCC projected financial statements, and Year 5 of the projected financial statements included as Attachment JZW-1 in my direct testimony. As I state elsewhere in my rebuttal testimony, Granger Water anticipates extending the terms of the water treatment loan beyond the March 31, 2024, maturity date, or converting to a principal and interest loan with a longer term if the situation requires. In either case, Granger Water is not dependent on full build-out of its design capacity to repay the treatment plant loan.

Therefore, the treatment plan loan poses a financial burden insofar as Granger Water is not able to sell 160 lots. Capital contributions (3) are relatively small compared to the scope of the operations, and do not pose a threat to financial viability. The largest source of owner contributions ($2.6 million) are for repayment of the distribution system loan (which if the tax law changes as Ms. Sullivan appears to believe will occur, repayment will not be necessary as the distribution system loan will be forgiven or the distribution system will be contributed as CIAC). It's important to recognize that the projected $290,000 annual contribution is based on expanding the distribution system to 365 customers. Granger Water will not undertake to expand the distribution system to accommodate 365 customers all at once, but rather, will expand the incrementally in phases of approximately 40 lots. This means that Granger Water will be able to expand commensurate with the growth of Village Development. Hypothetically, were the customer growth assumptions not realized, Granger Water would cease to expand the distribution system until necessary, which would decrease the required owner contributions to Granger Water. Said differently, the owners of Granger Water will only need to contribute for distribution system loans if Village Development is successful in selling lots and building new connections.

35. Q WHAT IS THE MOST SIGNIFICANT ELEMENT TO A UTILITY'S FINANCIAL VIABILITY?

A Cash flow is the most critical element of financial viability. Even with the differing assumptions employed in my projected financial statements, the OUCC project positive

operating cash flow in Year 5, while the projections in my Testimony shows positive operating cashflow in Year 4. Losses sustained in earlier years are offset by either cash balances (mainly the decrease of the interest reserve) or positive receipts from financing activities. All start-up utilities will face cash flow obstacles in early years of customer growth. Granger Water has provided for reliable means of mitigating the cash flow deficit in its initial years of operation.

PROPOSED CAPITAL STRUCTURE

36. Q DO YOU AGREE WITH MR. DELLINGER'S ASSERTION THAT PROPOSED CAPITAL STRUCTURE IS NOT IN THE RATEPAYERS' INTEREST?

A No. Granger Water is not seeking to collect a return on investment in the initial years of operation. Therefore, the weighted average cost of capital is not relevant to the rate payers in the projection period shown in Attachment JZW-1. In fact, if Granger Water were to extend the terms of the debt as proposed by Mr. Dellinger, this would result in an additional interest cost burden to the owners that would at some point be transitioned to the ratepayers at the time Granger Water implements fully allowable rates.

I further note that the OUCC is trying to have it both ways. The OUCC wants low risk, which Granger Water has attempted to achieve through aggressive repayment of the water plant loan based on reasonable assumptions but also have greater debt to achive Mr. Dellinger's preferred capital structure. (Granger Water notes that the utilities identified by Mr. Parks as not achieving projected growth rates (Parks Testimony, page 11, lines 7-9) all relied heavily on debt).

37. Q DID THE PETITIONER INTEND TO PROPOSE A CAPITAL STRUCTURE FOR THE NEXT 10 YEARS OF OPERATION IN ITS FILING?

A No. The intention of Attachment JZW-1 was to project 10 years of operating results based on proposed rates and certain assumption outlined within the attachment. Mr. Dellinger proposed funding the plant expansion with debt rather than equity. While financing the plant expansion was not assumed in Attachment JZW-1, the Petitioner would certainly consider that as an option and request Commission approval as necessary as Granger Water grows.

38. Q DID THE PETITIONER SEEK COMMISSION APPROVAL FOR A COST OF EQUITY AMOUNT?

A No. During its early years of operation, Granger Water will not charge rates that generate a return on rate base. Cost of equity will be a discussion point in a future rate case.

LIFE CYCLE COST ANALYSIS

39. Q DID THE PETITIONER SUBMIT A WATER SYSTEM MANAGEMENT PLAN ("WSMP") FOR APPROVAL AS A PART OF ITS PETITION?

A No, not for approval by the Commission. Granger Water submitted a WSMP to the Indiana Department of Environmental Management ("IDEM") for review under 327 IAC 8-3.6-6(3)(B).

40. Q DO YOU AGREE WITH MR. DELLINGER THAT A LIFE CYCLE COST ANALYSIS IS REQUIRED BY IDEM AS PART OF THE UTILITY'S WSMP?

A I'm not aware of that requirement. Mr. Dellinger may be referring to the managerial capacity requirements of 327 IAC 8-3.6-6(3)(B) that requires a cost benefit analysis comparing: (i) development of a new public water supply system, (ii) consolidation with an existing public water supply system, and (iii) interconnection with an existing public water supply system. Granger Water included a cost benefit analysis in section 3.3.5 of its WSMP.

41. Q IS A LIFECYCLE COST ANALYSIS AN APPROPRIATE MEASURE FOR EVALUATING THE OPTIONS SUGGESTED BY MR. DELLINGER?

A No. Lifecycle Cost Analysis presumes ownership of the alternatives under consideration. As the Corporate Finance Institute summarizes it, "[Life Cycle Costs Analysis] considers all costs associated with obtaining, owning, and disposing of an investment." (https://corporatefinanceinstitute.com/resources/knowledge/finance/life-cycle-cost-analysis/). Mr. Dellinger is not comparing two options that contemplate ownership, but rather compares (Option 1) operation of a water utility, owned by Granger Water, to (Option 2) construction of a main connection that is donated to Mishawaka. This flaw in his analysis allows Mr. Dellinger to incorporate all the costs of operating, maintaining, and improving the system in Option 1 with just the construction price of Option 2. Accordingly, Mr. Dellinger's analysis compares apples to oranges and results in a fatally flawed conclusion.

42. Q DO THE TOTAL COSTS IDENTIFIED BY MR. DELLINGER IN TABLE SD-1 PROVIDE RELEVANT CONSIDERATION FOR THIS CAUSE?

A No. As I summarized above, these figures do not compare apples to apples. Mr. Dellinger testifies that the ongoing expenses of connecting to Mishawaka utilities (Option 2) are not reflected in the analysis as "they are borne by the ratepayers and are not cash outlays by the utility or the ratepayers." Nonetheless, Mr. Dellinger includes the ongoing expenses of operation and maintenance and depreciation expense of Granger Water Utility (Option 1) even though a portion of these costs will be recovered through rates in the early years, with the intention of recovering the entirety of those costs from ratepayers in future years. Not only is a lifecycle cost analysis inappropriate for evaluating these options, the analysis is incomplete and flawed.

COMPARISON OF GRANGER WATER'S PROPOSED RATE TO MISHAWAKA UTILITIES

43. Q WHAT METHOD DID THE OUCC USE IN PROJECTING FUTURE MISHAWAKA UTILITY RATES?

A Mr. Dellinger increased current rates by two percent (2%) per year as an estimate of long term inflation increases.

44. Q IS THAT AN ADEQUATE METHOD FOR PROJECTING FUTURE RATE INCREASES?

A No. Inflationary increases may be appropriate for projecting future expenses of operation and maintenance. In my experience, capital requirements of a utility can often impose the largest changes in rates through funding of extensions and replacements or debt service for capital projects. In response to Data Request 1-7 (which asked "Did the OUCC consider the City of Mishawaka's capital improvement plan in its assessment of rates in the next 10 years? If yes, please provide a copy of the plan.") the OUCC responded in part that it "did not obtain or review Mishawaka's capital improvement plan." Review of that plan should have been performed in any reasonable analysis of future rates.

Punctuating the OUCC's oversight, Mishawaka has already passed by ordinance in December 2020, two water rate increases of 16% and 23% taking effect January 1, 2022, and January 1, 2023, respectively. A copy of the relevant sections of Mishawaka's code of ordinances reflecting these rate increases is attached as Attachment JZW-3. The OUCC stated, also in response to Data Request 1-7, that "Subsequent to filing the OUCC's case, the OUCC determined that phase rate increases are scheduled by Mishawaka for 2022 and 2023," but has not sought to correct its faulty analysis. The two rate increases enacted by Mishwaka in late 2020 alone nearly eclipse the estimated 2031 Mishawaka rate calculated by Mr. Dellinger, let alone the increases that may occur in the projection period due to the Mishawaka's capital needs. Accordingly, the Commission should reject Mr. Dellinger's projected rate comparison.

45. Q DOES COMPARING THE PROJECTED RATES OF GRANGER WATER TO A PRESUMED WATER RATE FOR MISHAWAKA PROVIDE MEANINGFUL ANALYSIS FOR THIS CAUSE?

A I don't think so. It's a hypothetical exercise, and it does not account for the rate increases already scheduled to take effect. While I have not completed any analysis of Mishawaka's water utility, as that is beyond the scope of my engagement with Granger Water, there is no way to know what capital projects might be required for Mishawaka to provide safe and reliable water utility service to its customers in the next 10 years, or the effects of funding those projects on Mishawaka's future water rates.

NON-RECURRING CHARGES

46. Q HOW DO YOU RESPOND TO THE OUCC'S CRITICISMS OF THE PROPOSED NON-RECURRING CHARGES FOR GRANGER WATER?

A Granger Water provided cost justification for the charges as presented by Ms. Sullivan in CFS -16 and CFS-17. Ms. Sullivan may not agree with the $100 per incident support for Office Overhead and Billing (CFS-17), but by providing a recommendation to disallow non-recurring charges, she neglects to allow for the expenses that would be incurred by Granger Water from Teachers Credit Union for a return check fee of $32 or the charge from RB Trucking and Towing for their hourly fees for a service call ($135 during business hours or $405 during holiday or weekend hours). As to the late payment charge, she is silent as to her justification in opposition to it.

Granger Water has justified the proposed non-recurring charges, but in the interest of reducing the number of issues in contention in this Cause, it is willing to propose the following as the non-recurring charges:

Service Call (Business Hours/Non-Emergency): $160.00

Service Call (After Hours/Holiday): $430.00

Bad Check Charge: $57.00

Late Payment Charge of ten percent (10%) on the first three dollars and three percent (3%) on amounts in excess of three dollars.

I believe the foregoing non-recurring charges are cost justified and should be approved.

CONCLUSION

47. Q CAN YOU PLEASE SUMMARIZE YOUR REBUTTAL TESTIMONY?

A Yes. I have testified that Granger Water has presented reasonable customer growth projections, has demonstrated that a regulatory asset should be created, has presented reasonable and Commission-approved manner of accounting for system development charges from a tax and operations perspective, has justified implementation of a flat rate, has demonstrated it distribution system loan and water plant loan are reasonable and in the public interest, has supported its financial ability and proposed capital structure, has demonstrated that the OUCC's lifecycle cost analysis and Mishawaka rate

comparison are each flawed and inappropriate to consider, and has presented cost justified non-recurring charges that should be approved.

48. Q DOES THIS CONCLUDE YOUR PREFILED REBUTTAL TESTIMONY AT THIS TIME?

A Yes.

VERIFICATION

I hereby affirm, under the penalties for perjury, that the foregoing representations are true to the best of my knowledge, information, and belief.

Dated: October 26, 2021

Jennifer Z. Wilson

Jennifer Z. Wilson

LIST OF ATTACHMENTS
TO VERIFIED REBUTTAL TESTIMONY OF JENNIFER Z. WILSON

Attachment JZW-2 – 26 C.F.R. § 1.118-1 and -2

Attachment JZW-3 – Mishawaka Code of Ordinances reflecting future rate increases

Code of Federal Regulations
Title 26. Internal Revenue
Chapter I. Internal Revenue Service, Department of the Treasury
Subchapter A. Income Tax
Part 1. Income Taxes (Refs & Annos)
Normal Taxes and Surtaxes
Computation of Taxable Income
Items Specifically Excluded from Gross Income

26 C.F.R. § 1.118–1, Treas. Reg. § 1.118–1

§ 1.118–1 Contributions to the capital of a corporation.

Currentness

In the case of a corporation, section 118 provides an exclusion from gross income with respect to any contribution of money or property to the capital of the taxpayer. Thus, if a corporation requires additional funds for conducting its business and obtains such funds through voluntary pro rata payments by its shareholders, the amounts so received being credited to its surplus account or to a special account, such amounts do not constitute income, although there is no increase in the outstanding shares of stock of the corporation. In such a case the payments are in the nature of assessments upon, and represent an additional price paid for, the shares of stock held by the individual shareholders, and will be treated as an addition to and as a part of the operating capital of the company. Section 118 also applies to contributions to capital made by persons other than shareholders. For example, the exclusion applies to the value of land or other property contributed to a corporation by a governmental unit or by a civic group for the purpose of inducing the corporation to locate its business in a particular community, or for the purpose of enabling the corporation to expand its operating facilities. However, the exclusion does not apply to any money or property transferred to the corporation in consideration for goods or services rendered, or to subsidies paid for the purpose of inducing the taxpayer to limit production. See section 362 for the basis of property acquired by a corporation through a contribution to its capital by its stockholders or by nonstockholders.

Credits
[T.D. 6500, 25 FR 11402, Nov. 26, 1960]

Historical Treasury Decisions: T.D. 6220, Dec. 28, 1956.

SOURCE: T.D. 6500, 25 FR 11402, Nov. 26, 1960; 25 FR 14021, Dec. 21, 1960, unless otherwise noted.

Notes of Decisions (18)

Current through May 17, 2021; 86 FR 26824.

End of Document

Code of Federal Regulations
Title 26. Internal Revenue
Chapter I. Internal Revenue Service, Department of the Treasury
Subchapter A. Income Tax
Part 1. Income Taxes (Refs & Annos)
Normal Taxes and Surtaxes
Computation of Taxable Income
Items Specifically Excluded from Gross Income

26 C.F.R. § 1.118–2, Treas. Reg. § 1.118–2

§ 1.118–2 Contribution in aid of construction.

Currentness

(a) Special rule for water and sewerage disposal utilities—(1) In general. For purposes of section 118, the term contribution to the capital of the taxpayer includes any amount of money or other property received from any person (whether or not a shareholder) by a regulated public utility that provides water or sewerage disposal services if—

(i) The amount is a contribution in aid of construction under paragraph (b) of this section;

(ii) In the case of a contribution of property other than water or sewerage disposal facilities, the amount satisfies the expenditure rule under paragraph (c) of this section; and

(iii) The amount (or any property acquired or constructed with the amount) is not included in the taxpayer's rate base for ratemaking purposes.

(2) Definitions—(i) Regulated public utility has the meaning given such term by section 7701(a)(33), except that such term does not include any utility which is not required to provide water or sewerage disposal services to members of the general public in its service area.

(ii) Water or sewerage disposal facility is defined as tangible property described in section 1231(b) that is used predominately (80% or more) in the trade or business of furnishing water or sewerage disposal services.

(b) Contribution in aid of construction—(1) In general. For purposes of section 118(c) and this section, the term contribution in aid of construction means any amount of money or other property contributed to a regulated public utility that provides water or sewerage disposal services to the extent that the purpose of the contribution is to provide for the expansion, improvement, or replacement of the utility's water or sewerage disposal facilities.

(2) Advances. A contribution in aid of construction may include an amount of money or other property contributed to a regulated public utility for a water or sewerage disposal facility subject to a contingent obligation to repay the amount, in whole or in part, to the contributor (commonly referred to as an advance). For example, an amount received by a utility

from a developer to construct a water facility pursuant to an agreement under which the utility will pay the developer a percentage of the receipts from the facility over a fixed period may constitute a contribution in aid of construction. Whether an advance is a contribution or a loan is determined under general principles of federal tax law based on all the facts and circumstances. For the treatment of any amount of a contribution in aid of construction that is repaid by the utility to the contributor, see paragraphs (c)(2)(ii) and (d)(2) of this section.

(3) Customer connection fee—(i) In general. Except as provided in paragraph (b)(3)(ii) of this section, a customer connection fee is not a contribution in aid of construction under this paragraph (b) and generally is includible in income. The term customer connection fee includes any amount of money or other property transferred to the utility representing the cost of installing a connection or service line (including the cost of meters and piping) from the utility's main water or sewer lines to the line owned by the customer or potential customer. A customer connection fee also includes any amount paid as a service charge for starting or stopping service.

(ii) Exceptions—(A) Multiple customers. Money or other property contributed for a connection or service line from the utility's main line to the customer's or the potential customer's line is not a customer connection fee if the connection or service line serves, or is designed to serve, more than one customer. For example, a contribution for a split service line that is designed to serve two customers is not a customer connection fee. On the other hand, if a water or sewerage disposal utility treats an apartment or office building as one utility customer, then the cost of installing a connection or service line from the utility's main water or sewer lines serving that single customer is a customer connection fee.

(B) Fire protection services. Money or other property contributed for public and private fire protection services is not a customer connection fee.

(4) Reimbursement for a facility previously placed in service—(i) In general. If a water or sewerage disposal facility is placed in service by the utility before an amount is contributed to the utility, the contribution is not a contribution in aid of construction under this paragraph (b) with respect to the cost of the facility unless, no later than 8 ½ months after the close of the taxable year in which the facility was placed in service, there is an agreement, binding under local law, that the utility is to receive the amount as reimbursement for the cost of acquiring or constructing the facility. An order or tariff, binding under local law, that is issued or approved by the applicable public utility commission requiring current or prospective utility customers to reimburse the utility for the cost of acquiring or constructing the facility, is a binding agreement for purposes of the preceding sentence. If an agreement exists, the basis of the facility must be reduced by the amount of the expected contributions. Appropriate adjustments must be made if actual contributions differ from expected contributions.

(ii) Example. The application of paragraph (b)(4)(i) of this section is illustrated by the following example:

Example. M, a calendar year regulated public utility that provides water services, spent $1,000,000 for the construction of a water facility that can serve 200 customers. M placed the facility in service in 2000. In June 2001, the public utility commission that regulates M approves a tariff requiring new customers to reimburse M for the cost of constructing the facility by paying a service availability charge of $5,000 per lot. Pursuant to the tariff, M expects to receive reimbursements for the cost of the facility of $100,000 per year for the years 2001 through 2010. The reimbursements are contributions in aid of construction under paragraph (b) of this section because no later than 8 ½ months after the close of the taxable year in which the facility was placed in service there was a tariff, binding under local law, approved by the public utility commission requiring new customers to reimburse the utility for the cost of constructing the facility. The basis of the $1,000,000 facility is zero because the expected contributions equal the cost of the facility.

(5) Classification by ratemaking authority. The fact that the applicable ratemaking authority classifies any money or other property received by a utility as a contribution in aid of construction is not conclusive as to its treatment under this paragraph (b).

(c) Expenditure rule—(1) In general. An amount satisfies the expenditure rule of section 118(c)(2) if the amount is expended for the acquisition or construction of property described in section 118(c)(2)(A), the amount is paid or incurred before the end of the second taxable year after the taxable year in which the amount was received as required by section 118(c)(2)(B), and accurate records are kept of contributions and expenditures as provided in section 118(c)(2)(C).

(2) Excess amount—(i) Includible in the utility's income. An amount received by a utility as a contribution in aid of construction that is not expended for the acquisition or construction of water or sewerage disposal facilities as required by paragraph (c)(1) of this section (the excess amount) is not a contribution to the capital of the taxpayer under paragraph (a) of this section. Except as provided in paragraph (c)(2)(ii) of this section, such excess amount is includible in the utility's income in the taxable year in which the amount was received.

(ii) Repayment of excess amount. If the excess amount described in paragraph (c)(2)(i) of this section is repaid, in whole or in part, either—

(A) Before the end of the time period described in paragraph (c)(1) of this section, the repayment amount is not includible in the utility's income; or

(B) After the end of the time period described in paragraph (c)(1) of this section, the repayment amount may be deducted by the utility in the taxable year in which it is paid or incurred to the extent such amount was included in income.

(3) Example. The application of this paragraph (c) is illustrated by the following example:

Example. M, a calendar year regulated public utility that provides water services, received a $1,000,000 contribution in aid of construction in 2000 for the purpose of constructing a water facility. To the extent that the $1,000,000 exceeded the actual cost of the facility, the contribution was subject to being returned. In 2001, M built the facility at a cost of $700,000 and returned $200,000 to the contributor. As of the end of 2002, M had not returned the remaining $100,000. Assuming accurate records are kept, the requirement under section 118(c)(2) is satisfied for $700,000 of the contribution. Because $200,000 of the contribution was returned within the time period during which qualifying expenditures could be made, this amount is not includible in M's income. However, the remaining $100,000 is includible in M's income for its 2000 taxable year (the taxable year in which the amount was received) because the amount was neither spent nor repaid during the prescribed time period. To the extent M repays the remaining $100,000 after year 2002, M would be entitled to a deduction in the year such repayment is paid or incurred.

(d) Adjusted basis—(1) Exclusion from basis. Except for a repayment described in paragraph (d)(2) of this section, to the extent that a water or sewerage disposal facility is acquired or constructed with an amount received as a contribution to the capital of the taxpayer under paragraph (a) of this section, the basis of the facility is reduced by the amount of the contribution. To the extent the water or sewerage disposal facility is acquired as a contribution to the capital of the taxpayer under paragraph (a) of this section, the basis of the contributed facility is zero.

(2) Repayment of contribution. If a contribution to the capital of the taxpayer under paragraph (a) of this section is repaid to the contributor, either in whole or in part, then the repayment amount is a capital expenditure in the taxable year in which it is paid or incurred, resulting in an increase in the property's adjusted basis in such year. Capital expenditures allocated to depreciable property under paragraph (d)(3) of this section may be depreciated over the remaining recovery period for that property.

(3) Allocation of contributions. An amount treated as a capital expenditure under this paragraph (d) is to be allocated proportionately to the adjusted basis of each property acquired or constructed with the contribution based on the relative cost of such property.

(4) Example. The application of this paragraph (d) is illustrated by the following example:

Example. A, a calendar year regulated public utility that provides water services, received a $1,000,000 contribution in aid of construction in 2000 as an advance from B, a developer, for the purpose of constructing a water facility. To the extent that the $1,000,000 exceeds the actual cost of the facility, the contribution is subject to being returned. Under the terms of the advance, A agrees to pay to B a percentage of the receipts from the facility over a fixed period, but limited to the cost of the facility. In 2001, A builds the facility at a cost of $700,000 and returns $300,000 to B. In 2002, A pays $20,000 to B out of the receipts from the facility. Assuming accurate records are kept, the $700,000 advance is a contribution to the capital of A under paragraph (a) of this section and is excludable from A's income. The basis of the $700,000 facility constructed with this contribution to capital is zero. The $300,000 excess amount is not a contribution to the capital of A under paragraph (a) of this section because it does not meet the expenditure rule described in paragraph (c)(1) of this section. However, this excess amount is not includible in A's income pursuant to paragraph (c)(2)(ii) of this section since the amount is repaid to B within the required time period. The repayment of the $300,000 excess amount to B in 2001 is not treated as a capital expenditure by A. The $20,000 payment to B in 2002 is treated as a capital expenditure by A in 2002 resulting in an increase in the adjusted basis of the water facility from zero to $20,000.

(e) Statute of limitations—(1) Extension of statute of limitations. Under section 118(d)(1), the statutory period for assessment of any deficiency attributable to a contribution to capital under paragraph (a) of this section does not expire before the expiration of 3 years after the date the taxpayer notifies the Secretary in the time and manner prescribed in paragraph (e)(2) of this section.

(2) Time and manner of notification. Notification is made by attaching a statement to the taxpayer's federal income tax return for the taxable year in which any of the reportable items in paragraphs (e)(2)(i) through (iii) of this section occur. The statement must contain the taxpayer's name, address, employer identification number, taxable year, and the following information with respect to contributions of property other than water or sewerage disposal facilities that are subject to the expenditure rule described in paragraph (c) of this section—

(i) The amount of contributions in aid of construction expended during the taxable year for property described in section 118(c)(2)(A) (qualified property) as required under paragraph (c)(1) of this section, identified by taxable year in which the contributions were received;

(ii) The amount of contributions in aid of construction that the taxpayer does not intend to expend for qualified property as required under paragraph (c)(1) of this section, identified by taxable year in which the contributions were received; and

(iii) The amount of contributions in aid of construction that the taxpayer failed to expend for qualified property as required under paragraph (c)(1) of this section, identified by taxable year in which the contributions were received.

(f) Effective date. This section is applicable for any money or other property received by a regulated public utility that provides water or sewerage disposal services on or after January 11, 2001.

Credits
[T.D. 8936, 66 FR 2254, Jan. 11, 2001]

SOURCE: T.D. 6500, 25 FR 11402, Nov. 26, 1960; 25 FR 14021, Dec. 21, 1960, unless otherwise noted.

AUTHORITY: Sections 1.267A–1 through 1.267A–7 also issued under 26 U.S.C. 267A(e).; Section 1.1502–59A also issued under 26 U.S.C. 1502.

Current through January 7, 2021; 86 FR 1248.

End of Document

DIVISION 1. - GENERALLY

Sec. 62-381. - Connection with water main; permit.

(a) When any person desires to connect with any water main in the city, he shall first obtain a written permit from the building department to do so. The permit shall give the number of the lot, block and street number where the connection is to be made, and the size of the connection.

(b) The permit shall be filed with superintendent of the water works of the city 24 hours previous to the time it is desired to make such connection. The superintendent shall keep a record of all such permits and connections in a book to be kept for that purpose.

(Code 1968, tit. 550, § 1; Code 1985, § 51.01; Ord. No. 334, 5-4-1908)

Sec. 62-382. - Protection of water meters, curb boxes.

It shall be unlawful for any person, not an employee of the city water department or an authorized plumber, to use, handle, molest, interfere with, or disturb any meter or any curb box of the city water department within the city, or any street valve or appliance connected therewith or belonging thereto, or to turn on or to turn off water at the same time or by means thereof. It shall not be unlawful for any person to turn off the water at the valve of any curb box where the property supplied through the valve of the curb box is being injured by a flood of water caused by a burst pipe or from defective fittings.

(Code 1968, tit. 550, § 2; Code 1985, § 51.02; Ord. No. 469, 4-1-1918)

Sec. 62-383. - Approval and confirmation of the general rules, terms, and rates for the city utilities water department and the Clay Water Department.

(a) The general rules, terms, and rates, a copy of which is attached to Ordinance Number 3003 on file in the office of the city clerk, and which are incorporated herein by reference, by and between the city, by and through its board of public works and safety for and on behalf of the city utilities water department and the Clay Water Department be, and the same are hereby in all things approved, ratified, and confirmed.

(b) The board of public works and safety of the city is hereby authorized and directed to execute the general rules, terms, and rates on behalf of the city.

(c) This section shall be in full force and effect from and after its passage by the common council and approval by the mayor; provided, however, that the schedule of rates and charges shall not become effective unless approved by the state public service commission, or until such time as the commission shall direct.

(Code 1985, § 51.03; Ord. No. 3003, 1-5-1987; Ord. No. 3073, 7-23-1987)

Sec. 62-384. - Wellhead protection.

(a) The city hereby adopts and incorporates by reference the contents of the county wellhead protection Ordinance Number 103-98, as amended from time to time, and further requests and authorizes the county health department to administer the wellhead protection program for the benefit of the community public water system utilized by the city and the city utilities.

(b) The city utilities, which is the intended community public water system in the incorporated ordinance, shall designate and delineate the wellhead protection area (WHPA) in accordance with criteria established in 327 IAC

8-4-1-5 and as set forth in the incorporated ordinance.

(c) Property owners within the corporate limits of the city not exempted under the ordinance, utilities or local units of government with multiple facilities on several properties shall apply for and obtain a wellhead protection area permit issued by the county health department in accordance with the terms and provisions of this section, and shall comply with the requirements applicable to all wellhead protection area permit holders as described in the ordinance. In case of any conflict within the city, city ordinances and zoning laws will have absolute jurisdiction.

(Ord. No. 4899, §§ 1—3, 11-15-2004)

Secs. 62-385—62-411. - Reserved.

DIVISION 2. - RATES

Sec. 62-412. - Schedule of rates and charges.

(a) *Schedule of rates and charges—Inside city.* For the use of and the service rendered by the water utility of the City of Mishawaka, Indiana, the following rates and charges based upon the amount of water supplied by said water utility.

(1) *Residential and multi-unit.*

a. *Metered rates.* Phase One and Phase Two effective January 1, 2022 and January 1, 2023, respectively, in the amounts as follows:

Metered Rates per Month	Current (2021)	Phase One	Phase Two
Rate per 100 cubic feet	$2.52	$2.92	$3.10

b. *Customer base charge.* Phase One and Phase Two effective January 1, 2022 and January 1, 2023, respectively, in the amounts as follows:

Size of Meter*	Current (2021)	Phase One	Phase Two
⅝" to ¾"	$8.26	$9.58	$10.15
1"	8.26	9.58	10.15

*Meters over 1 inch are reclassified to commercial and industrial rates

c. *Fire protection charge.* Phase One and Phase Two effective January 1, 2022 and January 1, 2023, respectively, in the amounts as follows:

Customer Charge	Current (2021)	Phase One	Phase Two

Per month	$6.09	$7.06	$7.48

(2) *Small Non-residential.*

a. *Metered rates per month.*

	Current (2021)	*Phase One*	*Phase Two*
All consumption per 100 cubic feet	$2.57	$2.98	$3.16

b. *Customer base charge.* Each user shall pay a monthly base charge in accordance with the following applicable size meter installed:

Size of Meter	Current (2021)	Phase One	Phase Two
⅝" to ¾"	$8.26	$9.58	$10.15
1"	16.67	19.34	20.50
1½"	30.66	35.57	37.70
2"	47.41	55.00	58.30
3"	86.54	100.39	106.41

c. *Fire protection charge.*

Size of Meter	Current (2021)	Phase One	Phase Two
⅝" to ¾"	$6.09	$7.06	$7.48
1"	15.22	17.66	18.72
1½"	30.43	35.30	37.42
2"	48.70	56.49	59.88
3"	91.31	105.92	112.28

(3) *Large nonresidential.*

a. *Metered rates per month.*

	Current (2021)	Phase One	Phase Two
First 7,750 cubic feet	$2.67	$3.10	$3.29
Over 7,750 cubic feet	1.69	1.96	2.08

b. *Customer base charge.* Each user shall pay a monthly base charge in accordance with the following applicable size meter installed:

Size of Meter	Current (2021)	Phase One	Phase Two
4"	$142.43	$165.22	$175.13
6"	282.26	327.42	347.07
8"	449.99	521.99	553.31
10"	645.70	749.01	793.95

c. *Fire protection charge.*

Size of Meter	Current (2021)	Phase One	Phase Two
4"	$152.15	$176.49	$187.08
6"	304.36	353.06	374.24
8"	486.98	564.90	598.79
10"	700.02	812.02	860.74

(4) *Hydrant rental.*

	Current (2021)	Phase One	Phase Two

Private hydrants - per annum	$784.21	$909.68	$964.26

(5) *Private fire protection service.*

	Current (2021)	Phase One	Phase Two
Sprinkler connection - per annum			
1"	$21.79	$25.28	$26.80
1½"	49.11	56.97	60.39
2"	87.16	101.11	107.18
3"	196.09	227.46	241.11
4"	348.63	404.41	428.67
6"	784.21	909.68	964.26
8"	1,394.13	1,617.19	1,714.22
10"	2,178.34	2,526.87	2,678.48
12"	3,136.86	3,638.76	3,857.09

(6) *Nonrecurring charges.* Refer to subsection (c). Current rate effective March 5, 2013.

(b) *Schedule of rates and charges—Outside city.* For the use of and the service rendered by the water utility of the City of Mishawaka, Indiana, the following rates and charges based upon the amount of water supplied by said water utility.

(1) *Residential and multi-unit.*

a. *Metered rates.* Phase One and Phase Two effective January 1, 2022 and January 1, 2023, respectively, in the amounts as follows:

Metered Rates per Month	Current (2021)	Phase One	Phase Two	Surcharge Percentage
Rate per 100 Cubic Feet	$2.92	$3.39	$3.59	16%

b. *Customer base charge.* Phase One and Phase Two effective January 1, 2022 and January 1, 2023, respectively, in the amounts as follows:

Size of Meter*	Current (2021)	Phase One	Phase Two	Surcharge Percentage
⅝" to ¾"	$9.75	$11.31	$11.99	18%
1"	9.75	11.31	11.99	18%

*Meters over 1 inch are reclassified to commercial and industrial rates.

c. *Fire protection charge.* Phase One and Phase Two effective January 1, 2022 and January 1, 2023, respectively, in the amounts as follows:

Customer Charge	Current (2021)	Phase One	Phase Two
Per month	$6.09	$7.06	$7.48

(2) *Small nonresidential.*

a. *Metered rates per month.*

	Current (2021)	Phase One	Phase Two	Surcharge Percentage
All Consumption	$2.93	$3.40	$3.60	14%

b. *Customer base charge.* Each user shall pay a monthly base charge in accordance with the following applicable size meter installed:

Size of Meter	Current (2021)	Phase One	Phase Two	Surcharge Percentage
⅝" to ¾"	$9.75	$11.31	$11.99	18%
1"	20.39	23.65	25.07	22%

1½"	38.10	44.20	46.85	24%
2"	59.39	68.89	73.02	25%
3"	109.02	126.46	134.05	26%

c. *Fire protection charge.*

Size of Meter	Current (2021)	Phase One	Phase Two
⅝" to ¾"	$6.09	$7.06	$7.48
1"	15.22	17.66	18.72
1½"	30.43	35.30	37.42
2"	48.70	56.49	59.88
3"	91.31	105.92	112.28

(3) *Large nonresidential.*

a. *Metered rates per month.*

	Current (2021)	Phase One	Phase Two	Surcharge Percentage
First 7,750 cubic feet	$2.50	$2.90	$3.07	(6%)
Over 7,750 cubic feet	1.94	2.25	2.39	15%

b. *Customer base charge.* Each user shall pay a monthly base charge in accordance with the following applicable size meter installed:

Size of Meter	Current (2021)	Phase One	Phase Two	Surcharge Percentage
4"	$179.94	$208.73	$221.25	26%

6"	357.19	414.34	439.20	27%
8"	569.87	661.05	700.71	27%
10"	818.04	948.93	1,005.87	27%

c. *Fire protection charge.*

Size of Meter	Current (2021)	Phase One	Phase Two
4"	$152.15	$176.49	$187.08
6"	304.36	353.06	374.24
8"	486.98	564.90	598.79
10"	700.02	812.02	860.74

(4) *Hydrant rental.*

	Current (2021)	Phase One	Phase Two
Private hydrants - per annum	$784.21	$909.68	$964.26

(5) *Private fire protection service.*

	Current (2021)	Phase One	Phase Two
Sprinkler connection - per annum			
1"	$21.79	$25.28	$26.80
1½"	49.11	56.97	60.39
2"	87.16	101.11	107.18
3"	196.09	227.46	241.11

4"	348.63	404.41	428.67
6"	784.21	909.68	964.26
8"	1,394.13	1,617.19	1,714.22
10"	2,178.34	2,526.87	2,678.48
12"	3,136.86	3,638.76	3,857.09

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(6) *Nonrecurring charges.* Refer to subsection (c). Current rate effective March 5, 2013.

(c) *Nonrecurring charges.*

(1) Water account service charge—$20.00.

(2) Sprinkling meters turn-on charge—$20.00.

(3) Service deposits—Service deposits are set by the Utility and can be up to one-sixth of normal annual bill per service location.

(4) Failure to meet appointment scheduled charge—$15.00.

(5) Dishonored negotiable instrument charge—$20.00.

(6) Processing/disconnect charge.

—Disconnect during office hours—$25.00.

—Additional reconnect charges after hours—$70.00.

—Additional reconnect charges on Sundays and holidays—$90.00.

(7) After hours service charge.

After hours and Saturdays—$70.00 minimum first two hours.

After two hours call out time an additional $35.00 per hour per man.

Sundays and holidays—$90.00 minimum first two hours.

After two hours call out time an additional $45.00 per hour per man.

(8) Turn water services off/on (for repair or to test plumbing). No charge during office hours 8—5.

For after hour charges, refer to item (7).

(9) Late penalty—Ten percent of the first $3.00 plus three percent of the balance.

(10) Meter tampering charge.

First offense—Actual cost of parts, labor, equipment and overhead plus cost of service estimated to have been used, based on prior history—$75.00 plus damages and a police report filed with police.

Second offense—Same as above, plus $250.00 plus damages.

Subsequent offenses—Same as second offense, plus disconnection of service.

(11) Violation of fire service agreement—Illegal use of fire hydrant.

First offense—$500.00.

Subsequent offense—$1,000.00 and subject to criminal charges.

(12) Construction permit fees.

150-day residential—$65.00.

240-day commercial—$135.00 per building or $5.00 per unit (whichever is larger).

320-day Industrial—$600.00 per building.

(13) New service address meter charges—Contact water department for current cost—574-258-1652.

Meter Size	Charge
⅝" to ¾" (touch pad)	Actual current cost
1"	Actual current cost
1½"	Actual current cost
2"	Actual current cost
3" and larger	Actual current cost

Damage to existing system actual cost of repair.

(14) Meter test at customer request. (No charge for first and second meter testing if second test has been requested after 12 months of the first testing).

Meter Size	Charge
⅝" to 1"	$25.00
1½" to 2"	$48.00
3" and larger	Actual cost

(15) Hydrant use agreement.

Hydrant permit charge—$35.00.

Deposit $750.00.

Damages to hydrant - repair cost to be deducted from deposit before refund, plus cost of water used, or per month (whichever is larger)—$50.00 minimum.

Township hydrant use (fire department use only)—$25.00 plus cost of water.

(16) Tapping permit. Existing taps never used and no fee paid at time of installation.

Residential	
¾"	$1,198.00
1"	$1,203.00
1½"	$1,564.00
2"	$1,738.00
Commercial	
¾"	Actual current cost
1"	Actual current cost
1½"	Actual current cost
2"	Actual current cost
Commercial/Industrial	
4"	Actual current cost
6"	Actual current cost
8"	Actual current cost
10"	Actual current cost
12"	Actual current cost

All new taps—Actual current cost.

Contact water department for current pricing—574-258-1652.

(17) Lead service line replacement tap costs. (Does not include meter).

Size	Cost
⅝" to ¾"	$1,198.00
1"	$1,203.00
1½"	$1,564.00
2"	$1,738.00

(18) Land improvement charges.

Nonresidential	
Water Main	*Charge/Linear Foot*
6"	$12.00
8"	$16.00
10"	$20.00
12"	$24.00
14"	$28.00
16"	$32.00
20"	$40.00
24"	$48.00
Residential	
½ of the current cost of a 6" water main (100 feet maximum)	

(Code 1985, § 51.10; Ord. No. 2150, 6-5-1978; Ord. No. 2257, 2-19-1979; Ord. No. 2562, 10-18-1982; Ord. No. 2564, 10-18-1982; Ord. No. 2605, 4-19-1983; Ord. No. 3002, 1-5-1987; Ord. No. 3072, 7-20-1987; Ord. No. 3073, 7-23-1987; Ord. No. 3548, 12-2-1991; Ord. No. 3756, 9-27-1993; Ord. No. 4462, 12-6-1999; Ord. No. 4463, 12-6-1999; Ord. No. 4494, 6-19-2000; Ord. No. 4513, 8-21-2000; Ord. No. 5381, §§ 1, 2, 3-4-2013; Ord. No. 5569 , § 1(Exhs. A, B), 3-6-2017; Ord. No. 2020-40, § 1(Exhs. A, B), 12-21-2020)

Sec. 62-413. - Penalty.

Any person who violates any of the provisions of this article shall, upon conviction thereof, be fined subject to the provisions of section 1-7.

(Code 1968, tit. 550, § 2; Code 1985, § 51.99; Ord. No. 469, 4-1-1918)

Secs. 62-414—62-439. - Reserved.