

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

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

OUCCs PROPOSED ORDER

The Indiana Office of Utility Consumer Counselor (“OUCC”), by counsel, hereby submits its Proposed Order.

Respectfully submitted

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR

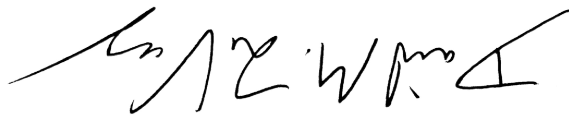


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CERTIFICATE OF SERVICE

This is to certify that a copy of the *OUCC's Proposed Order* has been served upon the following counsel of record in the captioned proceeding by electronic service on December 8, 2021.

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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 based on 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.

5. Public Comments. The Commission received both oral and written comments from Evansville's customers regarding requested relief in this Cause. The comments received generally opposed Evansville's requested rate increase. Some customers also questioned the spending priorities of Evansville, its operational efficiencies, and whether alternative means of funding the proposed capital projects might exist. Many customers also questioned the timing of Evansville's rate request, as well as the need for a rate increase during a pandemic and so soon after its last authorized rate increase.

6. The Parties' Evidence.

A. Evansville's Case-in-Chief. Evansville offered prefiled testimony from Lane T. Young, Douglas L. Baldessari, Michael Labitzke, and Simon Breese.

Lane T. Young, EWSU Executive Director, sponsored 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.

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.

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.

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 WTAFP 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 has been expanded in several stages over the years as the City has grown, with the oldest major unit processes still in service being Filters 13-20, constructed in the late 1930s and the newest, Filters 35 and 36, completed in 2008. *Id.* at 5. He testified that while generally, the City has been able to consistently meet water demands and treated water standards, 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. Mr. Breese testified the existing 6.5 MG clearwell is a particular concern because it is very difficult to remove from service for inspection or maintenance

without a complete plant shutdown. He stated the clearwell is considered a high risk because it is known to be in poor structural condition, and when operated at lower levels appears to be prone to groundwater infiltration through wall cracks that represents a pathway for direct contamination of the treated water supply with untreated water. *Id.* at 6-7. He reported that Evansville proposed adding a new 6 MG clearwell in Cause No. 45073 but that this was opposed by the OUCC. He noted the Commission agreed with the OUCC and found Petitioner had failed to demonstrate the reasonableness or need for the clearwell project.

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. Mr. Breese testified that demand has been well below this capacity in recent years, with average day demands in mid to low 20 mgd range, and peak summer demands rarely exceeding 30 mgd. *Id.* 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, sponsored the OUCC’s accounting schedules and presented the overall results of its analysis - overall recommended across-the-board revenue increase of \$9,185,727 or a 20.84% rate increase to be implemented in two phases. Pub. Ex. No. 1, p. 13. Ms. Stull recommended the Commission authorize the rate increase to commence no earlier than the first day of the forward-looking test year, April 1, 2023, disagreeing with Petitioner’s proposal to begin implementation of its

proposed rate increase on April 1, 2022. *Id.* at p. 8. Ms. Stull identified the primary drivers of Evansville's proposed rate increase as increased debt service and debt service reserve along with increased payments in lieu of taxes and a revenue shortfall from Evansville's last rate case. *Id.* at p. 11. Ms. Stull sponsored Table MAS-5, which included a comparison of the overall revenue requirement proposed by Petitioner and the OUCC. *Id.* at p. 14.

Ms. Stull evaluated Evansville's authorized rate increases from 2016 through its proposed 2026 rate increase in this Cause and demonstrated these increases would amount to a 178.0% increase over a 10-year period. Ms. Stull asserted this pace of rate increase was neither sustainable nor affordable for Evansville's customers and far exceeded inflation. *Id.* at 12-13.

Ms. Stull recommended *pro forma* operating revenues at present rates of \$44,087,215 and sponsored Table MAS-9, which presented a comparison of operating revenue adjustments proposed by Petitioner and the OUCC. *Id.* at 17 and 19. Ms. Stull accepted several of Evansville's proposed operating revenue adjustments, including (a) elimination of COVID-19 pandemic effect for all but the residential customer class, (b) Cause No. 45073 Phase 2 and Phase 3 increases for all but the residential customer class, (c) normalization of public and private fire protection, (d) loss of a major industrial customer (Pittsburgh Glass Works), and (e) declining consumption. She explained that while she accepted Evansville's proposed residential customer adjustments for COVID-19 and Cause No. 45073 rate increases, it was necessary to recalculate these adjustments after removing sales taxes from residential revenues. *Id.* at 16 – 17. Ms. Stull recommended her own base period normalization adjustments for residential, commercial, and public authority customer classes. She also recommended the removal of \$277,772 of sales tax expense from residential operating revenues. Finally, she recommended an adjustment to reflect \$318,645 of additional sale for resale revenues from Gibson Water Authority.

Ms. Stull recommended *pro forma* operating expenses of \$17,236,898 and sponsored Table MAS-15, which presented a comparison of operating expense adjustments proposed by Petitioner and the OUCC. She explained the OUCC accepted several of Evansville's proposed operating expense adjustments, including (a) \$446,234 increase to salaries and wages to reflect 2021 budget and to add two new employees; (b) \$52,454 increase to payroll taxes related to increase in salaries and wages; (c) \$113,491 increase to PERF expense related to increase in salaries and wages; (d) \$115,662 increase in health and life insurance benefits for two new employees; (e) \$61,641 increase to workers' compensation insurance expense related to increased salaries and wages; (f) \$5,177 decrease to teamster's scholarship fund expense per the union contract; (g) \$324,105 reduction to remove non-recurring expenses, (h) \$284,535 increase to contractual services expense, and (i) \$283,181 of additional sewer operating expenses. *Id.* at 31- 33. She also explained that while the OUCC does not agree with the inclusion of the consumer price index as a factor used to forecast utility operating expenses, the OUCC accepted Evansville's proposed inflation factors. But the OUCC applied those factors to its recommended operating expenses. *Id.* at 50.

Ms. Stull discussed her recommended \$159,195 decrease to base year periodic maintenance expense resulting in *pro forma* expense of \$884,537 and sponsored Table MAS-26, which presented a comparison of periodic maintenance expense adjustments proposed by Petitioner and the OUCC. Ms. Stull accepted Evansville's proposed booster pump expense but disagreed with the remaining periodic maintenance expenses proposed by Evansville. Ms. Stull also disagreed with Petitioner's assertion that the annual maintenance for high and low service

pumps and filter media had been excluded from proposed operating expenses in this filing. She explained that costs were incurred during the base period in these categories of periodic maintenance expense and Evansville did not propose an adjustment to remove these costs. Therefore, these costs are included in Evansville's proposed *pro forma* operating expenses. Ms. Stull also identified \$399,383 of additional base period expenses that should be included in the determination of the appropriate periodic maintenance expense adjustment. These additional base period expenses includes (a) a \$128,567 quarterly tank maintenance invoice, (b) a \$184,796 payment to rebuild traveling screen #1, (c) a \$3,389 base period expenditure for "SCADA at Filtration Plant," and (d) \$82,631 of base period pump maintenance costs. *Id.* at 34 – 48.

Ms. Stull discussed her recommended adjustment to eliminate \$26,594 of non-allowed fraud losses incurred during the base period. She explained these costs were recorded to an account identified as fraud loss expense with a description that identified them as "cybersecurity fraud." *Id.* at p. 48. Ms. Stull also discussed her acceptance of Evansville's proposed sewer reimbursement adjustments but explained that, because the OUCC did not entirely accept Evansville's proposed labor expenses to hire seven (7) new employees during the test year, an adjustment was necessary to remove the associated reimbursement for any shared costs not accepted. *Id.* at p. 49. Ms. Stull discussed her acceptance of Evansville's proposed bad debt expense rate but explained she applied this rate to her recommended present rate operating revenues to determine her recommended \$5,283 bad debt expense adjustment. *Id.* at p. 51. Ms. Stull also explained her recommended \$41,085 increase to utility receipts taxes was based on the 1.46% tax rate (effective January 1, 2022) applied to her recommended present rate operating revenues. *Id.* at 51 – 52.

Finally, Ms. Stull discussed and explained her recommended \$9,805,580 extensions and replacements revenue requirement, which is based upon her acceptance of Evansville's proposed \$49,027,000 of capital projects averaged over a five-year period. *Id.* at 52 – 53.

Mr. Thomas W. Malan, Utility Analyst with the OUCC's Water/Wastewater Division, discussed the OUCC's recommended expense adjustments for salaries and wages, employee benefits, and lease expense. Mr. Malan also explained the OUCC's recommended revenue requirement for payment in lieu of taxes ("PILT").

Mr. Malan disagreed with Petitioner's addition of nine new positions and recommended only four new positions be included in rates, including an accounting clerk, a night shift supervisor-water construction, a safety professional, and an administrative assistant. Regarding the accounting clerk and night shift supervisor positions, Mr. Malan recommended a \$103,000 increase to base period salaries and wages and a \$61,468 increase for associated benefits and payroll taxes. Pub. Ex. No. 2, p. 15. Mr. Malan further explained that the accounting clerk and night shift supervisor positions will be shared with the sewer department and, therefore, 50% of the costs of these positions should be reimbursed from the sewer department. *Id.* at p. 9. Regarding the safety professional and administrative assistant positions, Mr. Malan explained the adjustment for these positions was embedded within Petitioner's base period labor expense adjustments. As the OUCC has accepted these adjustments, no additional adjustment is necessary. *Id.* at p. 8.

Mr. Malan accepted Evansville's proposed vehicle lease expense adjustment but disagreed with its proposed increase for the office space lease. He explained the office space is shared with

the sewer utility. Base period expense reflected the water utility's 50% share of these costs per the lease agreement and, therefore, no adjustment was necessary. *Id.* at 5 – 6.

Mr. Malan explained his calculation of PILT and recommended a \$4,752,346 revenue requirement for rates to be implemented in 2023. He explained he accepted the tax rate and the 25% estimate for property located outside of municipal limits as proposed by Evansville. However, because of recommendations made by other OUCC witnesses, his recommended PILT was different from that proposed by Evansville. *Id.* at 4 – 5.

Shawn Dellinger, Utility Analyst in the Water/Wastewater Division, testified regarding (a) Petitioner's proposed \$238,165,000 bond issuance; (b) the revenue requirement for debt service; (c) the debt service reserve and the revenue requirement for debt service reserve; (d) Petitioner's previous bond issuances and its delay in spending those funds on capital improvements; (e) the short-term and long-term effects of Petitioner's proposal to wrap its debt; and (f) a true-up process. Pub. Ex. No. 3, p. 2-16.

Regarding the bond issuances, Mr. Dellinger recommended a total debt authority of \$167,000,000, with the ability to add another \$30,000,000 through a sub-docket proceeding. He arrived at this amount of funding by reducing Petitioner's proposal for six distinct adjustments. First, he eliminated two fees totaling \$1,100,000 (PER fees of \$750,000 and WIFIA fees of \$350,000). Second, he reduced the Water Treatment Plant Costs by \$28,175,000 due to the OUCC's recommendation for a smaller plant size. Third, he reduced the Water Treatment Plant Costs by \$9,700,000 to remove costs related to building a new garage. Fourth, he removed \$30,000,000 for the TSS/Mercury project (also referred to as the dewatering project or residuals management) with the ability to add this amount back to the borrowing authority through a sub-docket proceeding. Fifth, he eliminated \$8.5 Million of capitalized interest expense. Sixth, he flowed-through adjustments on items such as underwriters' fees and IURC fees. Mr. Dellinger accepted the broad outlines of Petitioner's debt terms, including the term of the debts and Petitioner's proposal to wrap the debt, but disagreed with the assumed interest rate and amount to be borrowed. He recommended an interest rate of approximately 2.38% for the Open Market borrowing and 2.25% for the SRF borrowing. For purposes of calculating maximum debt authority and maximum interest rate authorized, he used an interest rate of 4.75%. *Id.* at 2-8. Mr. Dellinger recommended an annual revenue requirement of \$3,675,000 for debt service and \$735,000 for debt service reserve. *Id.* at 17.

Mr. Dellinger discussed Petitioner's previous bond issuances and the merits of aligning the timing of the borrowings with the associated spending. He discussed the exceptionally large, restricted balances over the previous few years, which were over \$102,000,000 as of September 30, 2020. He discussed the rate of spending from these bond issuances, and that although Petitioner had not spent more than \$18,500,000 in previous years, Petitioner projected spending over \$41,750,000 in just the final seven months of 2021, or an annual rate of over \$70,000,000. He suggested that this is an ambitious level of spending and that Petitioner should delay borrowing where practicable until existing balances are generally spent. *Id.* at 8-11.

Mr. Dellinger discussed the short and long-term effects of wrapping debt, including the advantages and disadvantages to ratepayers, and explained that wrapping the new debt obscured the true effect on rates for these projects. *Id.* at 12-14.

Mr. Dellinger recommended the Commission require Petitioner to file a report within 30 days of closing on each of its long-term debt issuances with the terms of the new loan, the amount of debt service reserve, and an itemized account of all issuance costs. He also recommended that once the debt service reserve is fully funded in October 2027, tariffs should be reduced to reflect this reduced expense or, alternatively, that this revenue should be placed in a restricted account to be used to pre-fund a future debt service reserve or lower amounts that would need to be borrowed in a future rate case. He also recommended that annual reports should be sent until the proceeds from the new bond issuances are spent. *Id.* at 14-16.

James T. Parks, Utility Analyst II in the Water/Wastewater Division evaluated Petitioner's \$269.2 million capital improvement plan to replace the surface water treatment plant, aging water mains, and water mains in conflict with road projects. Mr. Parks testified the existing treatment plant has a 42 MGD firm capacity with Petitioner reporting "Demand has been well below this capacity in recent years, with average day demands in mid to low 20 MGD range, and peak summer demands rarely exceeding 30 MGD." Pub. Ex. No. 4, p. 5. Mr. Parks testified Evansville is oversizing its new plant by 25% because of unsupported aggressive water demand growth forecasts that are contradicted by Petitioner's overall declining use. He tabulated Petitioner's water pumped, water sold, and non-revenue water showing water pumped decreased since 2008 and averaged 21.99 MGD over the last ten years with water sold averaging 17.85 MGD. *Id.* at 48. Based on a detailed analysis of customer growth, population forecasts, historical water production and likely future water demands (*Id.* at pgs. 5 – 21), Mr. Parks recommended that instead of the proposed 50 MGD plant, Evansville size its new plant for 40 MGD. *Id.* at 21.

Mr. Parks testified Petitioner's plant oversizing is caused by incorrect planning assumptions starting from overstated base year demands using unsupported rather than actual flows. He testified actual 2020 demands by customer class were comparable to the four-year (2017 to 2020) average demands. *Id.* at 7-8. He testified AECOM's assumed 8.26 MGD residential demand for 2020 is 24% above actual residential water sold of 6.64 MGD. During cross examination, Mr. Parks noted 2020 average residential usage was higher than 2019 (pre-pandemic) because people were at home, but that he did not adjust flows for Covid. Hrg. Tr., p B-36. Mr. Parks testified AECOM's forecasted residential demand rising 1.5% annually to 12.91 MGD in 2050 is inflated by 85%, is not reasonable (5.94 MGD overstated), and will not occur. To reach a 12.91 MGD residential demand, he explained Evansville would have to nearly double its residential customers to 114,127 from the current 59,605 customers, which is equivalent to adding 121,584 more people. Mr. Parks testified that this far exceeds the Indiana Business Research Center's ("IBRC") 2050 Vanderburgh County population gain of 8,948 people. *Id.* at 17.

Mr. Parks also testified Petitioner was unable to explain the basis it used for its assumed annual growth estimates for each customer class and that Evansville did not provide data or any study, report, or analyses to support its assumptions. *Id.* at 9. Mr. Parks described OUCC Growth Estimates 1 and 2. He estimated 2050 water demands under these two scenarios by preparing demand and annual growth estimates, reflecting actual 2020 water sold and residential growth based on IBRC population projections. In OUCC Growth Estimate 1, he assumed commercial growth mirrors residential growth, but lowered the industrial growth rate to 1.5% due to the negative demand trend. He matched AECOM's assumed wholesale, public authority, and leaks and losses growth rates. Under OUCC Growth Estimate 1, he calculated the new treatment plant

should be sized for a 34.5 MGD maximum day demand in 2050 with the average day demand at 24.6 MGD. *Id* at 18. Mr. Parks noted AECOM used a lower 3.50 MGD non-revenue water volume than the actual 6.13 MGD he calculated. *Id* at 8.

In OUCC Growth Estimate 2, he utilized AECOM's same assumed growth rates for industrial, wholesale, and public authority classes, but used a 1.25% commercial annual growth rate and tripled residential growth from Estimate 1 to 0.474% per year. He testified commercial growth should track with residential, but conservatively applied over 2.5 times the residential rate to the commercial class. Based on the more optimistic OUCC Growth Estimate 2, Mr. Parks testified the new treatment plant should be sized for a 39.7 MGD maximum day demand (rounded to 40 MGD) and a 28.4 MGD average day demand. *Id*. Mr. Parks compared AECOM's overstated 2020 and 2050 water demands by customer class to OUCC Growth Estimates 1 and 2 in Table 7 (*Id* at 19) and graphically in Figure 2 along with historical water sold data from 1996 to 2020 and Evansville's projected 2021 to 2024 declining use. *Id* at 20. He testified the Figure 2 graph visually depicts AECOM's overstated water demand assumptions that if followed will lead to construction of an oversized 50 MGD plant that is not warranted. *Id*. Mr. Parks recommended Petitioner re-evaluate AECOM's water demand forecasts, preferably using updated IBRC population forecasts based on 2020 Census data to confirm the new plant can be sized for 2050 average day and maximum day demands of 28.4 MGD and 40 MGD respectively. *Id* at 21.

Mr. Parks summarized Evansville's efforts under Cause No. 44760 in 2016 and Cause No. 45073 in 2018 in developing a new groundwater treatment plant ("GWTP") that Evansville stated was preferred because it would protect against: 1) spills and river contamination that could force closure of the river intake causing a loss of supply; 2) water main breaks in the winter caused by near freezing river water adversely affecting the City's cast iron water mains; 3) intake structure damage during floods or barges colliding with the intake causing a loss of water supply; and 4) treatment variability caused by turbidity spikes and varying water quality. *Id* at 22. Mr. Parks testified that a new GWTP would also address mercury and total suspended solids ("TSS") discharges to the Ohio River from blowdown of river sediments removed during treatment. *Id*.

Mr. Parks explained Evansville has now opted to build Alternative 2B – a new surface water treatment plant with conventional pretreatment, ozonation and biological filtration – on the site of the existing Evansville Street Maintenance Department garage, which is east of the existing treatment plant. He testified AECOM's life cycle cost analyses did not address the mercury and TSS discharges and did not include the residuals management system's \$29,714,000 construction cost or the \$43,547,000 30-year operating and replacement cost (present worth). He testified the total 30-year life cycle dewatering cost would be an additional \$73,261,000. *Id* at 25.

Mr. Parks testified that Petitioner's proposed surface water plant does not address the issues the City identified in Cause No. 44760 and AECOM's Non-Monetary Scoring used to select Evansville's preferred alternative omits cold water induced water main breaks and the danger of barges damaging the intake structure. *Id* at 25. He noted AECOM's Scoring matrix also appears to be skewed with equal weighting (5 points each) for earthquakes, tornados, and floods. He testified that flooding, by far the major risk, should be weighted higher than earthquakes and tornados and that Environmental Factors weighting at 20 points nearly equals factors of greater importance such as river turbidity spikes, river spills / contamination, taste and odor control, and

organics and disinfection byproducts. *Id* at 25-26. Mr. Parks also noted Petitioner’s prior contamination concerns with leakage into the existing 6.5 MG concrete clearwell during high river stages and pointed out the proposed 5 MG concrete clearwell appears to be 15 feet *lower* than the bottom of the existing clearwell. He further noted that Petitioner’s preferred new plant site, while protected by Evansville’s levee system, can flood if ponding water cannot be pumped to the river. *Id* at 26. He testified that since 2016, Evansville has spent only \$2.506 million of the \$10 million total that was earmarked for planning and design of the new groundwater treatment plant. *Id* at 23. Mr. Parks testified that the residuals treatment system was not included in Attachment SMB-1 in Petitioner’s case-in-chief but was included in the April 23, 2021 revision of AECOM’s Advanced Facility Plan that the OUCC obtained from the Indiana Finance Authority (“IFA”). *Id* at 24.

Mr. Parks testified Evansville reported multiple differing cost estimates for the new WTP but that for review purposes, the OUCC focused on the \$175,838,000 construction cost estimate listed in Mr. Baldessari’s case-in-chief testimony which includes offsite construction of a new, larger City garage, five phases of construction for the new treatment plant, a mercury/TSS treatment process, and \$6.28M for construction engineering services/resident project representatives. *Id* at 26-27. Mr. Parks testified AECOM did not report the AACE estimate class in its testimony but in response to discovery identified its estimate was a Rough Order of Magnitude at the conceptual level (approximately 10% design).¹ *Id* at 28. Mr. Parks testified Petitioner’s estimates should be considered AACE Class 3 because: a) water quality and treatment processes are known, b) all unit processes and system components appear to be identified and sized, c) detailed unit costs were prepared by AECOM with Assembly Level line items, material quantities, and equipment quotations, d) 30% design level design drawings were part of AECOM’s scope of work tasks (Attachment JTP-6), and e) Evansville has established its requested project budget and is seeking financing authorization. *Id*. Mr. Parks attached Petitioner’s cost support provided in discovery which included Excel worksheets, Timberline cost estimating software output (54 pages of Assembly Level line items) and equipment quotations. *Id* at 28 and Attachment JTP-5.

Mr. Parks testified AECOM’s \$150,902,000 total estimated project cost for Plant Alternative 2B (Table 9-9, Advanced Facility Plan) includes \$13.691 million for a new City garage but omits existing plant demolition, renovations of existing treatment plant buildings that are to remain, the \$30 million residuals treatment system and design costs. The Preliminary Engineering Report (“PER”) lists \$166,925,000 for Alternative 2B without design costs and omits demolition and City garage replacement costs (non SRF eligible) but includes \$27,650,000 for the residuals treatment system. *Id* at 28-29. Mr. Parks tabulated and compared Petitioner’s cost estimates for a 50 MGD plant and the OUCC’s \$113,015,000 cost estimate for a 40 MGD plant in Attachment JTP-7. Mr. Parks noted Evansville’s new plant has been initially listed on IFA’s Project Priority List (“PPL”) at \$250 million cost (#4 priority project – 2022 1st Quarter PPL, July 19, 2021), which greatly exceeds Petitioner’s requested financing amount in this Cause. *Id* at 29.

Mr. Parks testified Petitioner did not identify the project’s overall contingency. He stated Evansville shows *additional* construction contingencies at 3% in Table 9-9 for Alternative 2B but did not identify the large estimating and construction contingencies embedded in most line items

¹ AACE stands for the Association for the Advancement of Cost Engineering.

of the estimate. Mr. Parks compared the wide variation in additional construction contingencies applied to the four Alternatives ranging from \$3,602,000 (3%) for Alternative 2B to \$14,319,000 (15%) for Alternative 1 (rehabilitate the existing plant). *Id* at 30. Mr. Parks recommended Petitioner use a standard 10% contingency in its cost estimates which matches the maximum contingency allowed by the Indiana Finance Authority. *Id*.

Mr. Parks testified the detailed estimates forming the basis for AECOM's cost estimates were always much higher than rolled-up costs generated through the Timberline cost estimating software. He reviewed AECOM's cost estimates in depth for a sampling of two of the sixteen process components: 1) rehabilitating the river intake and 2) constructing new high service pump station #4 ("HSP Station #4"). *Id* at 31-32 and Attachments JTP-9 and JTP-10. He testified AECOM listed costs for the intake at \$6,752,000 and HSP Station #4 at \$11,130,000 that are 107% and 272% higher than the rolled-up Timberline estimates. Mr. Parks' cost analysis showed that AECOM included an additional \$2,676,605 for the intake and an additional \$7,877,947 for HSP Station #4 beyond the OUCC's calculated Grand Total Costs. *Id* at Attachments JTP-9 and JTP-10.

Mr. Parks testified Evansville plans to build its new plant on land occupied by the Evansville Street Department's garage and to relocate the garage at a cost of \$13.2 million, funded entirely by water utility ratepayers. He testified Evansville failed to evaluate placing the new WTP on an unused 20-acre City owned site adjacent to the existing WTP thereby avoiding the \$13.2 million cost. *Id* at 34. This alternate site would also accelerate the WTP schedule by eliminating offsite property acquisition and garage relocation. Mr. Parks described the 1985 garage, which the Vanderburgh County Assessor rated to be in average condition, with a depreciated value of \$684,900 and a Replacement Cost New ("RCN") valuation of \$3,115,340. He testified Petitioner should only contribute the RCN cost of the existing garage along with \$154,600 of design fees (5% of the RCN), and \$197,000 in land acquisition costs or approximately \$3.5 million. *Id* at 39.

Mr. Parks testified he disagreed with Mr. Baldessari's assertion that the Water Utility must absorb the entire \$13.2 million cost of a relocated larger and more costly garage with betterments and enhancements. *Id* at 38. He testified approximately 32% of Petitioner's customers do not live within Evansville city limits and Water Utility funds should not be used to subsidize the Street Department by replacing an aged, average condition garage with a new, improved, larger and higher cost garage. *Id*. Mr. Parks noted the water utility has requested \$85 million in funding authority since 2013 to relocate water mains in conflict with road projects at no expense to the Street Department. *Id* at 39. Mr. Parks testified the OUCC does not object to a new garage but opposes Petitioner financing it entirely through water rates. He stated Evansville Street Department interactions with the Water Utility must be a two-way street and recommended the Commission only authorize financing of \$3.5 million for acquiring the garage property for the WTP project and relocating the City garage offsite. All additional costs for increased capacity, betterments, and enhancements to the new City garage should be funded through the Street Department budget and not through water rates. *Id* at 40.

Mr. Parks testified Petitioner did not complete all main replacement and relocation projects from Cause Nos. 44760 and 45073. He noted the OUCC's testimonial position that Evansville's water main estimates were inflated, the replacement schedule was overly ambitious, and the

financing amount should be reduced but that the OUCC did not oppose any water main project. He reported Petitioner rebutted in Cause No. 45073 stating the only thing holding Evansville back in achieving the 1.5% water main replacement rate was funding. Mr. Parks testified that in response to discovery Evansville did not indicate how many miles it replaced but based on the \$93,494,523 of remaining funds from the total amount of \$151,317,000, Evansville is clearly behind in its water main replacement program. *Id.* at 41-42. Finally, Mr. Parks recommended Petitioner track its main replacements and annually submit a capital improvements reconciliation along with its IURC Annual Report, setting forth the projects completed, improvements implemented, the feet of water main replaced and the costs thereof. *Id.* at 42-44. 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.* He noted such a reporting requirement was included for Evansville in Cause No. 43190. *Id.*

Mr. Parks recommended AECOM's estimated \$120,055,000 construction cost for the new 50 MGD plant be reduced by 20% or \$24,011,000 to reflect the reduced 40 MGD maximum day capacity. The new plant's total estimated construction cost with \$3.5 million for the City garage would decrease from \$140,049,000 to \$104,885,460. With 7.75% of non-construction costs, he recommended Petitioner be authorized \$113,015,000 to construct the new WTP and City Garage. *Id.* at 43. Mr. Parks further recommended Evansville finalize the selection of the new treatment plant after conducting 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 with adjustments made to the estimated costs to correct the analysis by including demolition costs missing under some alternatives, adding in the additional costs for residuals management under the three surface water options (Alternatives 1, 2A, and 2B), and removal of some clearwell and high service pumps costs missing from the selected Alternative 2B but included in the other three Alternatives (1, 2A, and 3). *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 discussed Petitioner's proposal to seek \$30 Million in funding from the Drinking Water State Revolving Fund ("SRF") Loan Program to construct a residuals management facility to address residual mercury levels by removing total suspended solids prior to discharge. Mr. Bell pointed out that the estimated cost to construct the residuals management Facility was only estimated to be \$17,479,000 and the remaining \$12 Million of funding was for Estimating Contingencies (\$4.37 Million), Contractor General Conditions (\$1.75 Million), Contractor Overhead and Profit (\$2.1 Million), Escalation to Midpoint (\$524,000), Engineering and Permitting (\$1.4 Million), Bidding, Construction Administration and Inspection (\$1.75 Million), and Testing and Commissioning (\$350,000). Mr. Bell explained that the estimated "Annual Dewatering O&M Cost" would be \$1.21 Million per year or \$36.3 Million over a 30-year period. He also indicated that the "Total 30-Year Life Cycle Cost" of the residuals management facility is estimated to be \$73.3 Million. Pub. Ex. No. 5, pp. 3-4.

Mr. Bell testified that on September 27, 2016, Evansville Water & Sewer Utility ("EWSU") submitted to IDEM an Application for a Variance from Indiana Water Quality

Standards for mercury. He explained that EWSU's Application for a Variance indicated that it was requesting the variance because it cannot consistently attain the final NPDES Permit limits for mercury using existing control methods. Mr. Bell explained that on December 31, 2020, Evansville submitted an Application for Renewal of NPDES Permit No, IN0043117, which incorporated the September 2016 Individual Variance Application for mercury. He stated that Evansville has not received a formal response from IDEM to the 2016 Application for a Variance. Mr. Bell testified that Evansville still has a pending Individual Variance Application for mercury with IDEM, which if granted may eliminate the need to construct the \$30 million residuals handling facility. Therefore, he concluded that it was premature to approve borrowing authority for a residuals handling facility that will be used to meet discharge standards Evansville is actively attempting to eliminate. He recommended that if the construction of a residuals handling facility cannot be avoided, then Petitioner should request a sub-docket be opened to request authority to issue debt to fund the residuals handling facility. Pub. Ex. No. 5, pp. 5-7.

Mr. Bell testified that, based on his experience, most regulated municipal water utilities, including Evansville, seeking Commission approval to complete capital projects use the public bidding procedures codified in the Public Work Projects Chapter, Ind. Code Ch. 36-1-12. Pub. Ex. No. 5, p. 7.

In summary, 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; (emphasis original) *Id.* Mr. Breese revisited the 2013 - 2018 raw and treated water flow graph from the Advanced Facility Plan with a revised graph, noting that because the treated water flow meter has been out of calibration since 2017, treated flows after December 31, 2016 are not shown on the revised graph. He reported a slight rising trend for raw water over the 5-year period with many occurrences of raw water pumping exceeding 35 MGD along with several exceeding 40 MGD. *Id.* at 7-8. He testified 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, just 6.25% below the 40 mgd capacity proposed by OUCC. *Id.* at 3. Mr. Breese also testified finished water is observed beyond 30 MGD during every summer month of the observation period before 2017. *Id.* at 8. 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.* At 3. 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 testified a reasonable allowance should be included for growth, including unforeseen growth such as a large industrial water user coming into the Evansville service area during the planning period. He reported that the City has very recently been approached by an industrial user with potential interest in locating a new facility in the Evansville area, with projected water demands of as much as 9 mgd. *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.

7. Commission Discussion and Findings. Ind. Code § 8-1.5-3-8(a) and (b) requires that a municipally owned water utility furnish reasonably adequate services and facilities and that the utility's rates and charges be nondiscriminatory, reasonable, and just. Section 8(c) further identifies the revenue requirements to be considered in establishing reasonable and just rates and charges, including: (1) all legal and other expenses incident to the utility's operation; (2) a sinking fund for the liquidation of bonds or other obligations; (3) debt service reserve; (4) working capital; (5) extensions and replacements to the extent not provided for through depreciation; and (6) taxes. A municipal utility's rates and charges for water service is subject to Commission approval. Ind. Code § 8-1.5-3-8(f).

Based on its rebuttal filing, Evansville requests approval for an overall across-the-board 31.24% increase, or a \$13,297,291 increase in revenue, to be implemented in five phases. Evansville also seeks

approval for financing authority in an amount not to exceed \$235,705,000. The OUCC recommended the Commission approve a 20.84 % overall across-the-board increase, or a \$9,185,727 increase in revenue, to be implemented in two phases. The OUCC took issue with certain aspects of Evansville's debt funded capital improvements, recommending Evansville's financing authority be reduced to \$167,000,000. The OUCC also challenged several of Evansville's *pro forma* revenue and expense adjustments. The following table summarizes the parties' positions and we address each of the issues presented further below.

A. Proposed Financing. Evansville initially sought authority to issue bonds in the total amount of \$238,165,000. The OUCC proposed a total authority of \$167,00,000, based upon an assumption of \$160,500,000 borrowing for revenue requirement purposes and an additional \$6,500,000 for increased capitalized interest if interest rates were 4.75%, and an additional \$30,000,000 via a sub-docket. On rebuttal, Evansville reduced its requested 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. A significant portion, although certainly not all, of this funding is driven by Evansville’s proposal to build a new 50 MGD water treatment plant. This is a multi-generational investment. The oldest part of Evansville’s existing water treatment 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 took issue with the overall capacity of the new plant and recommended a authorization to build a 40 MGD. The OUCC also recommended the proposed cost of the plant be reduced by 20% to correspond with the reduction in capacity. The OUCC also opposed the full allocation to the utility of the cost of replacing the City Garage, which will be relocated to accommodate the new water treatment plant. Pub. Ex. No. 4, p. 43. The OUCC further recommended removal from the borrowing request of Petitioner’s proposed residuals management facility (\$30,000,000) based on the utility’s pending request for variance from IDEM. Pub. Ex. No. 5, p. 17.

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 non-construction costs. The OUCC proposes financing authority of \$167,000,000, with the difference primarily driven by the cost for constructing the new treatment plant (\$28,175,000), the removal of the cost of the residuals facility (\$30,000,000) and the reduction of the utilities cost of relocating a city garage (\$9,700,000).² *Id.*; Pub. Ex. No. 3, p. 3.

² 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.

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 \$28 million for the reduced 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.

1. Water Treatment Plant Capacity. Evansville seeks authority to borrow \$235,705,000 of which \$174,980,000 is for a new 50 MGD surface water treatment plant. In support of that capacity, Evansville assumed an annual residential growth rate of 1.5%. The OUCC disagreed with Evansville’s 50 MGD sizing noting several factors including (1) Evansville’s use of forecasted 2020 demands by customer class that exceed actual 2020 demands; 2) unsupported assumed annual growth estimates for each customer class; 3) steady decrease in total volume of water sold since 2008, which trend is expected by Evansville to continue through 2024 as detailed in Evansville’s declining use discussion; (4) Evansville’s modest population growth in the past ten years; and (5) the IBRC’s forecasted 0.16% annual population growth for Vandenburg County (i.e. roughly one tenth of the 1.5% annual growth rate Petitioner relies on to justify a 50 MGD plant).

Relying on independent IBRC population forecasts and actual 2020 water sold data as a starting point, the OUCC proposed Evansville receive financing authority for a 40 MGD water treatment plant. In its proposed order addressing treatment plant capacity, Evansville referred us to the 1997 final order in Cause No. 40703, which Evansville said sets forth factors the Commission should consider when determining the appropriate level of capacity for purposes of public water utilities. Petitioner asked the Commission to consider first the reasonableness of the demand forecasts. But then Petitioner offered nothing of substance to support the reasonableness of its annual growth assumptions for each customer class that led to its higher average day and peak day demand projections. Public Ex. No. 4, pgs. 9-10. Petitioner also failed to provide support for its assumed 1.5% growth estimate with any data, study or analysis in its response to the Commission’s inquiry. Docket Entry response to question 2, October 6, 2021. Petitioner is only repeating their growth assumptions and reiterating the premise that predicting demand is not an exact science. Petitioner’s proposed order, pgs. 7, 9-10. Certainly, the methods Petitioner employed to project its water demand in the next 30 years were neither exact nor scientific.

Petitioner began the inquiry by misreading the source material stating inaccurately in AECOM’s April 23, 2021, *Water Treatment Plant Advanced Facility Plan, Alternatives Report* (page 14) that “The Comprehensive Plan included a section about future capacity needs of the WTP and recommended an annual population growth rate of about 7% through 2035.” While AECOM rejected relying on an annual 7% growth rate to make its demand forecast, it did not seem to recognize that growth rate was actually a misreading of the Comprehensive Plan. Rather it

rejected it as a “very aggressive growth model” that can yield an “unnecessarily large facility.” More importantly, AECOM did not go back to the source material to correct the error but substituted a lower but still unsupported 1.5% annual population growth rate, seemingly because it was less than 7%. But the population growth rate it selected was still not based on any level of growth actually experienced by Evansville in many decades nor based on any independent prediction of population growth. While lower than 7%, the 1.5% growth rate Evansville used to project its future demand lacks any *scientific* support, *exact* or *inexact*. In response to cross-examination, Mr. Breese of AECOM acknowledged that the 1.5% “was something we did in discussion with the City of Evansville.” Hr. Tr. A-16. “The development of I-69 is going to spur growth in the area, and so 1.5% was a number that was collectively agreed upon with the City.” *Id.* Furthermore, Evansville was invited through discovery to show calculations and inputs it used and explain how it determined its “City population growth rate of 1.5% per year, maintaining the same per capita demand through 2050.” Evansville provided none of those things. Rather it acknowledged it has experienced a decline in population since the 1960’s and merely explained that the 1.5% was not the “somewhat aggressive growth rate” assumed in the 2016 Water Master Plan. OUCC Attachment JTP-1. Hr. Tr. A-17 – 20. Petitioner asks the Commission to find that “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.” But Petitioner did not equip us with any indication of what those other tools might be. Rather, Petitioner asks the Commission to consider isolated, not recent (2016) flow readings indicating a peak day demands all of which were lower than 40 MGD. Pet. proposed order, p. 15.

On the other hand, the OUCC’s approach was both more exacting and more transparent. Using the pre 2015 IBRC population forecast (based on 2010 Census data), the OUCC calculated an annualized growth rate of 0.27%, roughly one fifth of the 1.5% growth rate AECOM chose by committee. The OUCC also noted that recent 2020 Census data shows lower population than IBRC projected and slower Evansville and Vanderburgh County actual growth than previously forecasted. That 2020 Census data showed Vanderburgh Co. added just 433 people between 2010 (179,703 people) and 2020 (180,136 people), while Evansville itself lost 131 people. Keeping the IBRC’s forecasted 2020 to 2050 growth rates, the OUCC calculated the annualized population growth rate is 0.16%. Public Ex. No. 4, pgs. 11-12. Thus, Evansville’s projections through 2050 rely on an assumed and unsupported growth rate nearly ten times the actual growth rate. At no point has Petitioner provided any support or meaningful analysis to support its assumed 1.5% annual population growth rate.

AECOM merely assumed significant increases in water demand across all customer classes even though the historical water sold trend is negative. The 1960 to 2010 population data AECOM presented for Evansville and Vanderburgh County showed long term declines for Evansville, a 2017 population of 117,500 people and an assumed initial 2020 population of 118,000 people that it used for its residential customer flow projections. AECOM broadly asserted that “Section Three, Population Projections and Water Demand of the Advanced Facility Plan summarizes Evansville’s anticipated population growth and draws upon historical usage patterns to formulate future projected demands.”³ AECOM provided no other discussion about the residential population or future population. Public Ex. No. 4, pgs. 14-15.

³ *Water Treatment Plant Advanced Facility Plan, Alternatives Report*, AECOM, April 23, 2021. See p. 3.

While it projects significant increased demand for purposes of justifying borrowing to construct a 50 MGD water treatment plant, Evansville proposed higher rates to address declining usage. In fact, historical water demands have declined for every customer class except wholesale customers. Residential demand declined steadily from 7.34 million gallons per day in 2014 to 6.64 MGD in 2020 up slightly from 6.47 MGD in 2019. Public Ex. No. 4, p. 15. Nonetheless, AECOM projected that residential demand will rise to 12.91 MGD in 2050. Importantly, the 8.26 MGD demand for 2020 AECOM used as a starting point was a projected value, exceeding the actual 6.64 MGD by 24%. Public Ex. No. 4, p. 16. AECOM reported current water usage of 115 gallons per customer per day and 58 gallons per capita per day.⁴ At these daily consumption rates, to reach AECOM's estimated 12.91 MGD residential demand in 2050, Evansville's total residential customers would need to be 114,127 in 2050. Evansville 59,605 residential customers would need to nearly double, adding 54,522 customers, and without any further declining use per customer. Mr. Parks calculated the expected population from 54,522 new residential customers based on 2010 Census data for Evansville of 2.23 people per housing unit making the 54,522 new residential customers equivalent to 121,584 people. This far exceeds the Vanderburgh County population gain of 8,948 people forecasted by the IBRC. Public Ex. No. 4, p. 17. Based on the IBRC population forecast of an annual growth rate of 0.16% for Vanderburgh County, the OUCC forecasted that residential demand would rise from 6.64 MGD in 2020 to approximately 7 MGD in 2050. Public Ex. No. 4, p. 17. We find that the OUCC's forecasted 2050 residential water demand of 7 MGD is better supported by IBRC population forecasts and more reasonable than Petitioner's assumed 12.91 MGD.

From Mr. Breese's discussion about raw and treated flows where he noted the treated water meter has been out of calibration since 2017, it appears treated flows after 2016 are not shown on the revised graph included in his Rebuttal. Pet. Ex. No. 2-R, pgs. 7-8. However, Mr. Breese does not explain how he determined the cut-off date where flow meter data became inaccurate. From our examination of the revised flow graph, it appears Mr. Breese removed all treated flow data after December 31, 2016 but failed to remove questionable 2016 flow data beginning in the summer of 2016 where treated flows exceed raw water flows which Mr. Breese testified in his Direct Testimony are not possible. Pet. Ex. No. 2, Attachment SMB-1, p. 17. He also fails to explain why a flow meter would become inaccurate on a calendar basis beginning January 1, 2017. Mr. Breese ignored the even higher 42 MGD treated water flow that occurred in the Spring of 2016. Several of these inaccurate flows appear to be at or above 32 MGD including the 37.5 MGD peak flow which Mr. Breese testifies is too close to the OUCC's proposed 40 MGD capacity. Evansville, a utility with acknowledged declining per customer usage as well as declining overall usage, seeks to spend \$175,000,000 to build a new water treatment plant at a capacity based on projections without reliable flow meters since 2016 according to Petitioner's engineering witness, Mr. Breese. Hr. Tr. A-31-32. This is troubling. Moreover, without adequately supporting its annual growth estimates and demand forecasts, Evansville asks us to consider the utility's need for a margin of safety or reserve. It should be considered either impossible or foolish to consider a utility's margin for safety or reserve without knowing a utility's current and reasonably projected demand.

⁴ *Id.*. See Table 3-5 2017 Individual Category Daily Water Use, page 17.

Petitioner argues there is little or no margin in the OUCC's 40 MGD plant. Petitioner asserted it has spent ten years considering the size and kind of plant in needs to build. Petitioner's Brief in Support of Proposed Order, p.1. Meanwhile, its demand for water has steadily and consistently declined according to its own accounting witness. Petitioner's Exhibit No. 2, p. 34. As Mr. Parks noted in his testimony, the current plant's firm rated capacity is only 42 MGD. Thus, ten years ago Evansville's water demand was greater than it is today, and its existing plant's firm rating is closer to the 40 MGD plant the OUCC recommends.

Petitioner asks us to find that AECOM's demand projections include an allowance for "potential unforeseen growth" associated with industrial and commercial expansion along the I-69 corridor. AECOM has never quantified this margin, nor is it the result of any calculation. Mr. Breese has been quite clear that the 1.5% was a product of discussions with Evansville, not detailed analysis or studies relying on calculations. Accordingly, we must consider such findings and arguments with skepticism. We also must discount the list of anonymous inquiries from unidentified "project requests" that Petitioner asserts range from "550,000 gallons per day to 9 million gallons per day." (Petitioner's Docket entry response 1-2, October 6, 2021.) If all of these are to be considered legitimate, likely connectors to the system, it would suggest Evansville should build a treatment plant far in excess of what it proposes. It is unknown what criteria Evansville employed for determining what counted as a "request." Nor did Evansville provide any meaningful information to permit us to evaluate the earnestness of such requests. Consequently, we cannot afford this list of anonymous possible connectors any weight. Finally, in as much as Petitioner's engineering witness Mr. Breese acknowledges a 40 MGD plant could be expanded in the future if demand increases. Petitioner's Ex. 2—R, p.5. We agree with the OUCC that Petitioner should receive the financing authority it needs to build a 40 MGD plant.

In its proposed order, Petitioner understates its own estimate of the project savings associated with constructing 40 MGD plant confusing \$7 million with 7% of the total cost of \$175,838,000 or roughly \$11 million.⁵ On the other hand, Petitioner asserts it would cost \$15-20 million in today's dollars to expand a 40 MGD plant to 50 MGD in the future should it become necessary. How Petitioner determined these values is less than clear. But in any case, if they are accurate, by its own analysis Evansville would risk spending an extra \$3 to \$8 million dollars later in order to secure current project savings in excess of \$11 million. Should the "potential unforeseen growth" associated with "industrial and commercial expansion" materialize, there would be more customers to share in those higher costs. However, if per customer usage continues to decline as Mr. Baldessari projects and the population does not grow at 1.5% per annum but more along the lines of the IBRC's projections, far into the future Evansville's customers will be paying debt service on \$11 million of unnecessary plant costs.

Of course, we do not know whether either of the two estimates should be considered Class 4 estimates or otherwise. The costs to be avoided by building a 40 MGD plant and the costs to be incurred by expanding a 40 MGD plant may be greater or smaller than what Petitioner has projected. Based on the foregoing, we agree with the OUCC that financing should be authorized

⁵ Similarly, in its proposed order, Petitioner also described the difference between a 40MGD and a 37.5 MG peak day as creating a margin of 2.5%. In fact, the mathematical relationship indicates a margin of 6.25% ($1 - (37.5/40) = .0625$).

to allow Petitioner to construct a 40 MGD plant designed so that it may be that may be expanded in the future if warranted by demand or if otherwise reasonably necessary.

We next address how such a change should affect Petitioner's construction costs for purposes of authorizing financing.

2. Costs for the New Water Treatment Plant. In light of our decision to authorize financing for a 40 MGD plant, which may be expandible to a 50 MGD plant if the need ever arises, in this section we will address the reasonableness of the OUCC's proposed reduction by 20% of Petitioner's estimated \$120,044,000 of construction costs for the water treatment plant exclusive of residuals management. Thus, the OUCC has proposed Petitioner be authorized financing authority of \$96,352,000 to construct a 40 MGD surface water treatment plant, excluding residuals management, which we address elsewhere. Before proceeding with this discussion, we would first note that the amount the OUCC proposes for financing to build a 40 MGD water treatment plant far exceeds the Timberline estimate for the construction of a 50 MGD treatment plant.

With respect to the treatment plant, a good deal of contention in this case revolved around whether Petitioner's estimates should be considered Class 4 estimates, which Petitioner contends or Class 3 estimates, which the OUCC asserted through the testimony of Mr. Parks. Preceding this controversy, Petitioner did not include in its case-in-chief any assertion about what Class Estimate it was relying on for its financing request. As indicated by the chart published by the Association for Advancement of Cost Estimating (AACE) Class 4 estimates indicate a level of project definition of 1% to 15% with a typical purpose of study or feasibility and with an expected low accuracy range of -15% to -30% and high accuracy range of +20% to +50%. JTP-4. Class 3 estimates indicate a level of project definition of 10% to 40% with a typical purpose of budget authorization or control and with an expected low accuracy range of -10% to -20% and high accuracy range of +10% to +30%.

Referring to the Timberline Report presented to the OUCC in discovery, the OUCC argued Petitioner prepared AACE Class 3 estimates. Mr. Parks noted the proposed treatment plant is similar to the existing treatment plant with known river water quality, known treatment processes that are similar to the existing processes and known new processes (ozone, biologically active filtration ("BAF")). He noted all unit processes and system components appear to be identified and sized. He noted detailed unit costs were prepared by AECOM with Assembly Level line items showing in detail on spreadsheets the material quantities and equipment vendors budgetary quotations.⁶ Mr. Parks indicated that while AECOM's scope of services called for a Class 4

⁶ This information was provided in response to a data request and included Excel worksheets, Timberline cost estimating software output and equipment quotations. Petitioner response to DR 17-6 Attachment 1 (Excel file tabulating costs from the Timberline cost estimating software – 13 worksheets), Attachment 2 (pdf file of Timberline cost estimating software output, 20-018 Engineer's ROM Estimate Level 4, June 12, 2020 – 54 pages) and Attachment 3 (2020 and 2021 equipment vendors budgetary quotes and scopes of supply and details for major pieces of equipment). See Attachment JTP-5.

estimate, it was tasked with preparing preliminary design drawings with a 30% level development, which is consistent with a Class 3 estimate. OUCC JTP-4. Finally, Mr. Parks noted Petitioner has established its requested project budget and is seeking financing authorization, which is consistent with the purpose of a Class 3 estimate (10% to 40% project definition.). OUCC JTP-6. Petitioner, on the other hand, asserted the cost estimates it presented in this case are merely conceptual level estimates (approximately 10% design).⁷

Having reviewed the level of detail shown in the Timberline report, which is included in OUCC JTP-5, we agree the level of spreadsheet detail, the material quantities, and equipment vendors budgetary quotations indicates the estimate presented in the Timberline report is a Class 3 estimate. Petitioner provided Timberline report in response to discovery from the OUCC. The Timberline software includes assembly level detailed listings with entries for labor, materials, installation equipment, subcontractors, and process equipment costs. The Timberline output was in pdf format that did not link to an excel file that may have shown how costs rolled up for individual processes and then tied into the WTPAFP and PER cost tables.⁸

While it relied on various larger contingencies in its request, Petitioner did not provide support for its contingencies in its case-in-chief. The Advanced Facility Plan AECOM prepared included only a single page construction cost estimates for process alternatives and for each of the four alternatives (Alternatives 1, 2A, 2B, and 3) and did not include any detailed cost support, material quantities, unit costs or equipment quotations.

The OUCC noted that the lump sum costs listed in the Water Treatment plant advanced facilities plan FP and PER tables were always much higher than rolled-up costs generated through the Timberline cost estimating software. For example, Mr. Parks reviewed AECOM's cost estimates in depth for rehabilitating the river intake and determined that AECOM's estimated total construction costs are 107% higher than the total amount listed in the rolled-up Timberline estimate. Likewise, AECOM's total construction cost estimates for the new high service pump station (HSP Station #4) were 272% higher than the total amount listed in the rolled-up Timberline estimate. The reason for these higher costs is unclear. The OUCC observed that Timberline costs appear to be base costs without contingencies and the contractor's overhead and profit and general conditions. Parks, p. 31. It is not clear in any case. But even if we assume the Timberline costs do not include such additional costs, that does not explain the very large increases over the Timberline estimates.

In its case, and in coordination with its recommendation that Evansville be authorized financing to allow it to build a new 40 MGD water treatment plant, the OUCC recommended AECOM's estimated \$120,055,000 construction cost be reduced by 20% or \$24,011,000 reducing the construction cost to \$96,352,000 exclusive of the residuals management project. Although the OUCC pointed out the lack of support for additional contingencies and increases over the very detailed costs set forth in the Timberline report, it did not incorporate any of those observations

⁷ Petitioner's response to Data Request 17-7.

⁸ Petitioner's response to DR 17-6 and DR 17-10. *See* Attachment JTP-5.

into a recommendation for reduced cost estimates that would be applicable based on a 50 MGD plant.

Petitioner provided very little response to the OUCC's testimony about the lack of support for contingencies and amounts greatly exceeding what was set forth in detailed Timberline report. The OUCC's testimony in this regard was largely not countered by Petitioner in its rebuttal case. Petitioner did not explain or evidence the very large increases to its estimates over the amounts listed in its very detailed Timberline report. Rather, Petitioner responded obliquely and vaguely to the issues raised by the OUCC with one question and answer from Mr. Breese:

Q. The OUCC has asserted that the cost estimates presented are Class 3 estimates, and suggest[s] that it is inappropriate for a 30% contingency to be included in the estimates. Please comment.

A. This is patently false. The Alternatives Analysis Report which formed the basis of the submission, and which included the cost estimates, was a **planning level** document. Within the body of the report, various alternatives were developed to a conceptual level (in range of 5-10% design) for the purposes of comparison. Standard practice for cost estimation, including the guidelines of the American Association of Cost Estimators (AACE), is to establish different Classes of cost estimates, with a range of accuracy that is commensurate with the level of development of design. Our design, as represented in the Advanced Facility Plan, and which formed the basis for the cost estimates, was simply not sufficiently developed to support a Class 3 estimate. As such, we stand by use of the 30% contingency, and believe it to be common practice for estimates prepared to a conceptual level. Our cost estimates were prepared by our in-house team of cost estimating professionals, who develop cost estimates for water and wastewater construction projects on a full-time basis. The estimated costs for the proposed plant are also in line with costs for other comparable facilities completed by AECOM.

(Simon Breese Rebuttal Testimony, Petitioner's Exhibit No. 2-R, pp. 16-17. (Underlined emphasis added. Bolded and underlined supplied by Mr. Breese.))

Whether a 30% contingency is appropriate for a planning level document misses the point. Mr. Breese acknowledged without hesitation that JTP-4 accorded with his understanding on what constitutes a Class 5 versus a Class 1 estimate. Hr. Tr. A-54. Mr. Breese likewise agreed that Budget Authorization was the end usage of a Class 3 estimate and that in processing Evansville's financing request, the Commission is engaged in budget authorization. Hr. Tr. A-55. A Class 4 estimate may have a level of contingency appropriate for analyzing costs at a conceptual level, but in this case the Commission is engaged in whether to approve financing and in what amount. Hence, a Class 3 or better estimate is what is needed in this case.

Mr. Breese could not explain with any clarity or consistency the relationship between the "Class 4" estimate on which Petitioner seeks financing and whether the 30% contingency embedded in that number already includes some portion of the high end of the "expected accuracy range." In other words, it was not clear whether any part of the upper end of the variation of

accuracy was already reflected in the estimate. Hr. Tr. A-64-67. It would seem Petitioner estimated its costs in the Timberline report totaling roughly \$70 million and then without adequate explanation, it has added a contingency of roughly 70% to arrive at a cost of \$120,044,000. To the extent it is appropriate for a utility to seek financing approval beyond its detailed estimates and incorporate the upper range of the accuracy range, a more appropriate value would have been \$90 million assuming the Timberline report is a Class 3 estimate or \$104 million assuming it is a Class 4 estimate.

Asserting a 40 MGD plant should be built, the OUCC recommended a 20% reduction of financing authority for the water treatment plant exclusive of the residuals management project – a decrease of \$24,011,000 from \$120,055,000 reducing the construction cost to \$96,352,000. According to the ACE chart, the expected accuracy range of a Class 4 estimate is a range with a low of -30% and a high of +50%. On the other hand, a Class 3 estimate has a range with a low of -20% percent and a high of only 30%. Looking at the components listed, the Timberline report indicates construction costs of less than \$70,000,000, not including residuals management. Hr. Tr. A-71-A-80. If that were to be considered a Class 3 estimate, it would have a range of roughly \$58 million to \$90 million. Thus, as the Timberline report presents a Class 3 estimate, the OUCC's recommended 20% reduction in borrowing needed for the water treatment plant project (\$96,352,000) is roughly \$6 million higher than the high end of the expected accuracy range for a Class 3 estimate of the \$69 million Petitioner's Timberline Report indicated was needed to build a 50 MGD water treatment plant. (We would also note that if the cost estimated by the Timberline report may be considered a Class 4 estimate, it would indicate a range in costs of roughly \$48 million to \$104 million. Petitioner asserted that if it constructed a 40MGD plant instead of a 50 MGD plant, it would save \$11 million. Accordingly, even if we were to add a 50% contingency to the Timberline estimate for constructing a 50 MGD plant, the cost of constructing a 40MGD plant would still be less than the \$96 million the OUCC recommended for the new treatment plant. (\$104 million less \$11 million = \$93 million.)

We agree with the OUCC that the Timberline report estimate should be considered a Class 3 estimate that can be used for Budget Authorization and Control. In other words, it may be considered to meet the threshold level of project definition that should be presented to the Commission for consideration of financing approval. The typical end purpose of a Class 4 estimate is to determine whether a project is feasible, not whether financing should be authorized. As Petitioner insists it has only presented a Class 4 estimate, no other values have been presented that are asserted to meet the minimum threshold level of project definition. Petitioner had not adequately explained the substantial increases over these estimates that Petitioner has requested. One of the consequences of requesting approval for financing armed with something less than a Class 3 estimate is that it would overstate the borrowing required. Faced with a lack of any cost estimate that is Class 3 or better, we would be inclined to reject Evansville's proposed financing with instructions to return for borrowing authority once it has secured an appropriate level of project definition. Accepting the OUCC's position that the Timberline report produces a Class 3 estimate, and in the absence of any convincing explanation by Petitioner as to why it should be considered less reliable than the unexplained and unsupported contingencies Petitioner has added to produce its "Class 4" estimate, we find that the OUCC's recommended financing amount will be sufficient to permit Evansville to build a 40 MGD plant.

During the evidentiary hearing Mr. Breese testified that its request of authority to borrow “151 million . . . includes 30 percent contingency to factor in the uncertainty in the design at 10 percent.” Hr. Tr. A-67. This statement underscores a troubling position. Petitioner has asked this Commission to authorize it to borrow funds based on a design that it considered only ten percent defined – a level of project definition that is not appropriate to secure financing (i.e., budgeting and control). This seemingly has resulted in Evansville asking for approval far in excess of its Timberline estimate. Presumably, if Petitioner had presented us with an estimate it considered to be Class 3, the contingency it built into its request would possibly have been less.

We cannot be certain because the methodology Petitioner used to increase its cost for a 50MGD plant beyond what was estimated by the Timberline Report lacks transparency. Further Petitioner’s main engineering witness explain during cross-examination the differences between the values in the Timberline Report and the Values in Petitioner’s financing request. Hr. Tr. A-37 - A-48. For instance, Mr. Breese could not explain one of the terms used in conjunction with its multiplication of the estimated amount - an “estimated loaded cost.” Hr. Tr. A-39, Lines 7 – 25.

Q Okay, and can you tell me what the purpose of a Multiplier from Estimate is?

A I cannot tell you that answer, no.

Q So you can’t – sitting here today, you can’t tell us what an Estimated Loaded Cost is?

A: No, sir.

Hr. Tr. A-39, Lines 20 – 25.

Petitioner has requested authority at the high end of the uncertainty range. However, that high end is both unnecessarily high and not adequately supported. Moreover, Petitioner is departing from tried-and-true methods of procurement of construction services (i.e., open competitive bidding) in favor of a Guaranteed Savings Contract with a Guaranteed Maximum Price. Open competitive bidding presents an opportunity for construction costs to be divorced from the utility’s cost expectations. The lowest responsive responsible bidder could present a cost that would be lower than a guaranteed maximum price negotiated by a utility that has gone on record suggesting that receiving less than the amount for which it has requested authority constitutes “slashing.” Petitioner’s Brief in Support of Proposed Order, p.1.

The Indiana General Assembly has charged us to act in a manner that is “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 of Indiana citizens. IC 8-1-2-0.5. (emphasis added.) Except for the Timberline report, Petitioner’s cost analysis lacks transparency that would permit us to be assured we are fulfilling this obligation. In his perfunctory response to the OUCC’s testimony noting the inexplicable cost increases over the very detailed Timberline Report, Mr. Breese responded in the most impenetrable manner. “Our cost estimates were prepared by our in-house team of cost estimating professionals, who develop cost estimates for water and wastewater construction projects on a full-time basis. The estimated costs for the proposed plant are also in line with costs

for other comparable facilities completed by AECOM.” Petitioner’s Exhibit No. 2-R, p. 17. In other words, “Stay out of the kitchen. We’ll let you know when the soup is ready.”

In authorizing borrowing using its self-described Class 4 estimate as a basis, it may seem that we have implicitly endorsed Evansville’s practice of relying on a Class 4 estimate to secure financing. We have not. Evansville did not indicate in its case in chief what class of estimate it was producing. And while the OUCC considered the contingencies and other additions to be both excessive and unexplained, it considered Evansville began with a very detailed assessment of costs that the OUCC considered to be at least a Class 3 estimate. Requests for financing authority, particularly of this magnitude, should be supported by cost estimates with projects definition no less than what is consistent with a Class 3 estimate. Utilities requesting financing authority should also make filings consistent with the level of cost contingency required by the Indiana Finance Authority and SRF programs.

Based on the foregoing, we find that the OUCC’s proposed financing authority for a 40 MGD water treatment plant of \$107,963,000, which is based on a \$96,352,000 construction cost for the new water treatment plant exclusive of residuals management plus \$3,500,000 for the utility’s portion of costs for the relocation of the city garage.

3. 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 described the breakdown of the \$30 million requested by Evansville for a residual management facility. He pointed out the estimated construction cost was only \$17,479,000 with an additional \$12 Million being added to the estimate including \$4.37 Million for estimating contingency. Pub. Ex. No. 5, p 4. Mr. Bell discussed how the construction cost is not the only cost associated with the residuals management facility and the annual dewatering of \$1.21, or \$36.3 Million over a 30-year period needs to be considered. Mr. 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 and if granted would eliminate the need to construct the facility. *Id.* at 6, 7. Mr. Bell noted Evansville originally filed for the mercury variance in 2016, and in 2020 filed a renewal of its NPDES permit which incorporate the 2016 variance request. *Id.* at 5-6. Mr. Bell noted Evansville has not received a formal response from IDEM to the 2016 Application for a Variance for mercury. 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. Mr. Bell stated it is premature to approve borrowing authority for a residuals handling facility that will be used to meet discharge standards Evansville is actively attempting to eliminate. *Id.* at 6-7. He further testified if the construction of a residuals handling facility cannot be avoided, then Petitioner should request a sub-docket 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 sub-docket 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, it is still unclear if the residuals management facility will be needed because Evansville has sought a variance from the mercury limits. The variance sought by Evansville has been pending since 2016. Evansville has provided no evidence indicating - IDEM will be providing a ruling on the variance any time soon. Evansville has committed that it will reduce its actual borrowing by \$30,000,000 if the facility is not needed, but this commitment does not justify granting borrowing authority for something the utility is still actively attempting to avoid. Additionally, we are concerned with Evansville's estimates for the residuals management facility. The estimate for construction of the facility was only \$17,479,000 million of the estimated \$30 million total. The additional \$12.5 million dollars contains a variety of things including \$4.37 million in estimating contingency. This equates to a 25% contingency. If we approve an additional \$30 million in borrowing authority now Evansville will have no incentive to reduce the cost, in fact it is highly likely the borrowing authority granted in this case will become a self-fulfilling prophecy. Approving the borrowing authority now would remove any protection the ratepayers would have. Given the large uncertainties with both the need for the facility and also the cost of the facility we deny Evansville's request to include \$30 million dollars in its debt authorization for the residuals management facility. If IDEM makes a determination that the residuals management facility is necessary Evansville may seek the opening of a sub-docket or file an appropriate case. As both parties have stated in testimony that if the facility is necessary Evansville should be granted authority to issue bonds there should be no undue delay or burden placed on Evansville. In fact, Evansville may use the time to prepare a cost estimate that is more accurate and does not contain 25% contingency.

4. Relocation of City Garage. Petitioner is requesting \$13.2 million in financing to purchase an existing City Garage and the land it resides on, and fund construction of a new offsite City Garage that is larger and contains more amenities. Mr. Baldessari claims 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. Mr. Parks discussed a potential alternative site for the new plant as being a City owned 20-acre parcel adjacent to the current plant. Mr. Parks acknowledged there is infrastructure on the 20-acre parcel, but he estimated it would cost less than half (\$5.0 million) of Petitioner's proposed amount to relocate the infrastructure. He noted that cost could be reduced even further if parts of the existing road could be reused. *Id.* at 35. Mr. Parks discussed the existing condition of the garage and noted the garage was constructed in 1985, consists of 82,800 square foot single story industrial type metal frame and metal sided garage building with a 12,000 square foot two-story brick and metal exterior office. *Id.* He noted the building sits on approximately 3.5 acres of city owned land, the parking / storage areas are unpaved, and there does not appear to be any storm water detention basin. *Id.* at 36. Mr. Parks then discussed the garage Petitioner proposed to finance through its water rates. He stated the new garage would be 85,000 square feet, have paved parking, separate equipment storage, a storm water detention pond, the office facilities would be enlarged to 15,000 square feet. Mr. Parks testified the Vanderburgh County Assessor determined a Replacement Cost New valuation for the garage of \$3,115,340. *Id.* at 37. Mr. Parks cited to an Indiana Department of Transportation manual which raises the concept of "functional replacement" and recognizes that additional financial assistance may be necessary when typical Fair Market Value compensation may be insufficient to restore it to the level needed to provide the same services and betterments or enhancements are only allowed where necessary to comply with existing laws. *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 and did not determine the value of the existing garage. *Id.* at 39. He recommended Petitioner be authorized \$3.5 million in funding, which was derived from the Assessor determined replacement cost of \$3,115,340, \$154,600 of design fees, and \$197,000 in land acquisition costs. *Id.*

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 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.*

In its proposed order Petitioner questions why Mr. Parks did not do an evaluation of whether the potential alternative site he identified would be appropriate for the new treatment plant. We would note Mr. Parks did evaluate that the land was owned by the City, was mostly unused and would be a logical place for the new plant. We find it unlikely that the land could not

be used for the treatment plant as described by Mr. Labitzke in his rebuttal testimony. There are many engineering solutions that could be applied, but we do not need to make a decision on placing the plant on the 20-acre parcel. Petitioner has chosen to place the plant where an existing city garage is located and we need to determine if \$13.2 million is an appropriate amount for the water ratepayers to bear. Petitioner claims that the two city departments cannot coordinate to reach a deal that will not unduly burden the water ratepayers. We find this claim to be disingenuous. Mr. Parks explained what value the county assessor assigned for the replacement cost new of the garage, \$3,115,340. Petitioner seems to conclude that functional replacement standard should elevate the replacement cost of the garage up to \$13.2 million. Petitioner cites to ML-5 for function replacement analysis. We do not find that analysis to be a function replacement analysis. The study offered from VS Engineering purports to consider some functional replacement portions but does not state what cost above Fair Market Value are due to functional replacement. We do not find any compelling evidence supporting the claim that the additional size of the garage and office along with betterment and enhancements are necessary to comply with any law and appear to only be the wish list of the Evansville Street Department. The water utility should not subsidize the Street Department by replacing an aged, average condition garage with a new, improved and larger garage at a significantly higher cost. In its proposed order Evansville indicates Mr. Parks should have indicated what in the study went beyond functional replacement and discounts the replacement cost determined by the assessor's office. We do not find Evansville's argument compelling. It is unclear what an independent evaluation of the assessor's office calculation would entail and we see no reason why the value determined by the County Assessor would not be valid. Additionally, we are unsure why Evansville comes to the opinion that the OUCC needs to provide evidence it did not. Evansville could have provided a breakdown of the functional replacement costs but it did not. Without these costs we find the Replacement Cost New from the County Assessor is a fair starting point for the existing city garage. We concur with Mr. Parks that the cost of the land and the design fees are appropriate. Thus, we find OUCC's estimate of \$3.5 million is appropriate, and \$3.5 million is the amount Petitioner should be permitted to borrow for relocating the City garage.

5. 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. We also find the \$350,000 of WIFIA fees to be funded through the proposed financing are appropriate and should be authorized. The OUCC opposed authorizing the funding of the application fees because it was not a certainty that Evansville would apply for the loan, and if it did the cost of the application fees would presumably be met by the savings associated with securing WIFIA funding. Mr. Baldessari said in his rebuttal testimony 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. As the OUCC acknowledged, if secured a WIFIA loan should produce significant savings for customers. 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.* Further, through its proposed order, the OUCC indicated it no longer had any objection to the WIFIA fees being funded through debt service as its concerns were addressed.

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 authorization 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.* The financing approved in this case is granted on the premise that interest rates should be around 2.25% for SRF borrowing and 2.38% for open market borrowing. A 4.75% cap affords Petitioner the ability to close without additional Commission approval on interest rates that are roughly double the interest rates established by this order. If factors should change significantly, it is appropriate that there be an opportunity to reevaluate the borrowing and its effect on ratepayers. A true-up report is not a mechanism to address this as it serves a different function – merely assuring that the actual costs to be incurred are accurately reflected in rates. Moreover, because Petitioner proposes to capitalize its interest, the interest rate not only affects debt service requirements, it also affects the amount of debt that is to be authorized. Consequently, it is necessary to establish an interest rate ceiling to establish an amount of debt to be authorized. We also note the overall borrowing authority based on a 4.75% interest rate is \$167 million. However, if the interest rates are 2.25% and 2.38%, the amount assumed in the OUCC's case, there would be less capitalized interest making the necessary debt authority only \$160.5 million. Petitioner should consider its borrowing authority for its projects adjusted by the applicable interest rates at closing. We are unwilling to grant borrowing authority with an unlimited interest rate. The only cap proposed in this case is a 4.75% cap. While we may consider a higher interest rate cap, none was presented in this case. Therefore, we find Mr. Dellinger's recommendation to cap the interest rate at 4.75% should be and is hereby 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.

6. Conclusion. Subject to our findings 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 \$5165,000,000 to construct a new 40 MGD water treatment and relocate the City Garage, among other things, subject to our findings above.

B. 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. Included in these pro forma revenues is a \$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 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.

1. 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.*

Mr. Baldessari disagreed in his rebuttal testimony 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.*

We agree with the OUCC that revenues associated with anticipated higher sales to Gibson should be recognized. Evansville elected to bring a rate case using a future test year. Part of a future test year case is projecting revenues. If Evansville did not want to project revenues it had the option to bring an historic test year rate case. Evansville may not bring a future test year case and only project some of the revenues. Mr. Baldessari states the 300,000 gpd was an assumed amount used for purposes of the agreement between Evansville and Gibson Water. The full cost of the capital projects to serve Gibson were included in Evansville's last rate case. Evansville will sell more water to Gibson and these sales are projected to begin in 2022. Revenue from Gibson is something that needs to be projected and included in this future test year case. We find no reason to true-up the revenues from Gibson because projecting revenues, like expenses, is part of a future test year case. If revenues are higher than projected or expenses are less Evansville will have the ability to fund additional projects, if Evansville finds revenue are less than expected it may file a rate case to remedy the situation.

2. 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.*

We disagree with Mr. Baldessari that \$25,741 of additional revenues should be deducted from the OUCC's proposed commercial normalization adjustment for additional commercial revenues already calculated in Petitioner's Adjustment 7. Evansville proposed a \$43,698 increase to commercial revenues to reflect a general test year normalization (Adjustment (3), Attachment DLB-1, page 24).⁹ Evansville also proposed a "specific" test year commercial and industrial growth adjustment of \$25,741 (Adjustment (7), Attachment DLB-1, page 25). The total commercial normalization adjustment proposed by Evansville is \$69,439 (\$43,698 (Adj. 3) + \$25,741 (Adj. 7)) and this amount is reflected in Table MAS-9, which compares the parties'

a. *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

C. **Revenue Requirement Operating Expenses**. In rebuttal, Petitioner proposed *pro forma* net operating expenses of \$17,611,322 (net of sewer utility reimbursement), incorporating 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 additional operating expense adjustments in 2023 to add seven (7) new employees and additional inflation. *Id.* at 28. The OUC accepted a number of Petitioner's proposed adjustments and recommended additional adjustments. Pub. Ex. No. 1, p. 32. The OUC ultimately recommended *pro forma* net operating expenses of \$17,236,898 (net of sewer utility reimbursement), which is \$374,424 less than that proposed by Evansville. *Id.* The difference in the parties' positions will be discussed in the following paragraphs.

	Base Period 9/30/2019	Adjustments	Present Rates <i>Pro Forma</i>
Operating Revenues			
Residential Water Sales	\$ 19,390,251	\$ 956,262	\$ 20,346,513
Commercial Water Sales	8,257,024	757,238	9,014,262
Industrial Water Sales	3,387,065	277,875	3,664,940
Public Authorities Water Sales	1,194,300	108,192	1,302,492
Sales for Resale	2,392,857	529,790	2,922,647
Fire Protection			
Public Fire Protection	5,198,361	567,615	5,765,976
Private Fire Protection	833,125	26,319	859,444
Late Fees	92,791	118,150	210,941
Other Operating Revenues	201,511	-	201,511
Total Operating Revenues	\$ 40,947,285	\$ 3,341,441	\$ 44,288,726

3. **Conclusion.** Based on the foregoing, we find Evansville's *pro forma* present rate revenue to be \$44,288,726 as shown below:

Table MAS-9 also shows the OUC proposed a commercial operating revenue adjustment of \$75,152, an increase of \$5,713 over the total adjustment proposed by Evansville. Further, Table MAS-11 shows Ms. Stull's calculation of the OUC's commercial customer growth adjustment, which reflects only a general growth adjustment. It is clear from this evidence that Ms. Stull did not accept Evansville's specific growth adjustment and, therefore, there is no need to adjust the OUC's commercial revenue further. We accept the OUC's increase to commercial operating revenues of \$75,152.

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.

While we agree with Mr. Baldessari, we encourage Evansville to include relevant contracts in their case-in-chief. Without the contract for leak detection Ms. Stull focused her analysis on historical expenditures over the last four years. While Ms. Stull's analysis would be appropriate without a contract 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-dredging 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, while we agree with Mr. Baldessari Evansville should provide relevant contracts with its case-in-chief to avoid undue issues. If the contract is signed after the case is filed we encourage Evansville to update its case. We find contracted amount of \$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. During cross examination, Mr. Baldessari stated his numbers came from the tank maintenance contracts. Tr. p. B-7. Mr. Baldessari was asked to review the tank maintenance contracts and point out where the numbers he used were found. Mr. Baldessari stated there was a different exhibit used. Tr. p. B-8. The contacts and statements of work provided by Evansville and included in Ms. Stull's testimony indicate the annual tank maintenance cost should be \$519,923 for the 9 tanks plus \$9,353 for the campground tank. We find no reason not to include these two amounts, which are found in the tank maintenance contracts.

For the reasons previously discussed, we agree with Ms. Stull. Petitioner has a contract showing annual tank maintenance expense of \$529,276, 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 with Ms. Stull. The evidence demonstrates the spending on booster stations fluctuates and is a prime candidate for placing in a restricted fund. Petitioner does not need to establish a separate fund for booster station pump maintenance the fund referenced by Mr. Baldessari will suffice. Thus, we find Petitioner shall place the funds collected for booster station pump maintenance into the previously established periodic maintenance fund.

Based on these adjustments the resulting *pro forma* amount of periodic maintenance expense we approve is \$1,132,100.

b. *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.

c. *Non-Allowed Expenses.* In its *pro forma* operating expenses, Petitioner included \$26,594 of cybersecurity fraud expenses associated with an instance of fraud that occurred during the base period. 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 cybersecurity threats and would recognize the costs of doing so are legitimate. *Id.* at 27.

On cross examination, Mr. Baldessari stated the \$26,594 expense was for legal fees associated with the fraud event, and not the actual fraud loss itself. Tr. p. B-11. However, a review of the evidence provided by the OUCC to support is adjustment shows this expense was not recorded as a legal expense but rather was recorded to Account No. 459046 – Fraud Loss with a transaction description of “reclass cybersecurity fraud.” Pub. Ex. 1, p. 48. While the OUCC did not elaborate on why these costs are not recoverable for ratemaking purposes, based on the description and information provided it is clear these are not legal expenses. Further, we note that Mr. Baldessari did not provide any invoices or other documentation in his rebuttal testimony to support his assertion these are legal fees that have been eliminated. We agree with Mr. Baldessari that legal expenses incurred as a result of cybersecurity threats are legitimate, but the actual fraud loss is not. Ultimately, we find the \$26,594 is not a legitimate expense and should be disallowed.

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. We believe Petitioner should adopt a formal policy to help mitigate these losses in the future; and we would encourage Petitioner to work expeditiously to prepare a formal cybersecurity policy to help mitigate against future threats.

d. *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 increased. *Id.* He testified Evansville’s PILT calculations are therefore better estimates of the future amounts and should be approved. In response to the Commission’s October 22, 2021 Docket Entry question regarding the OUCC’s PILT calculation, Ms. Stull stated “The amounts included in OUCC Schedule 8 as “Proposed Capital Improvement Projects” reflect total capital improvement plan costs as reflected in OUCC Workpaper MAS-6, line 97, less the amounts reflected for the new water treatment plant (line 30 of OUCC Workpaper MAS-6). OUCC Workpaper MAS-06, line 97, is the total of Evansville’s capital improvement plan, which includes debt funded projects as well as projects to be paid for through Evansville’s extensions and replacements revenue requirement, with reductions proposed by the OUCC to the water treatment plant costs.” Ms. Stull explained “The OUCC did not include the costs for the water treatment plant in any year’s PILT calculation if the year was before the plant was estimated to be completed and placed in service. Based on Evansville’s proposal, the water treatment plant construction will not be completed and placed in service until the end of the year 2026. While these costs could otherwise be considered in the calculation of PILT for 2027, these costs would not be included in the PILT calculation during the period Evansville’s rates are expected to be in place – 2023 through 2026.”

We agree with Ms. Stull. Based on our review of evidence, we find PILT should not be calculated on utility plant that has not yet been placed in service and considered used and useful. PILT represents the property taxes a municipality would collect if the utility were investor-owned. The taxing authority would not be allowed to charge property taxes on investor-owned utility plant that was not yet in service, and we are disinclined in this case to include PILT on Evansville’s water treatment plant before it is completed and in service. Thus, we find the OUCC’s PILT expense calculations are appropriate and should be included in the annual revenue requirement.

e. *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.

f. *Extensions and Replacements ("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 disagree with Mr. Baldessari's characterization that implementing the rate increase at the start of the forward-looking test year is a "deferral" of rate relief. As discussed below in more detail, Petitioner chose the forward-looking test year in this Cause and then sought to implement its rate increase earlier than the statute envisioned. We are disinclined to accept Petitioner's interpretation of the statute. Petitioner proposed a five-year extensions and replacement program and, therefore, we agree with Ms. Stull's use of a five-year average to determine the appropriate annual E&R revenue requirement. We find the annual revenue requirement for E&R is \$9,805,573.

C. Petitioner's Request for Two Forward-looking Rate Increases and Implementation. Petitioner's chosen forward-looking test period was the 12-month period beginning April 1, 2023. 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 also proposes five phases of rate increases, including an initial rate increase upon the issuances of an order or April 1, 2022, which would begin twelve months before the beginning of the Test Year. (In its case-in-chief, Petitioner referred to the first increase as Phase 1. In its rebuttal case, Petitioner expressed its willingness to "defer the Phase 1 rate increase effective date until the beginning of the forward-looking test year on April 1, 2023," resulting in four phases of increase. But in its proposed order, Petitioner again asked for five phases beginning with the April 1, 2022 increase based on its projections for that 12-month period.) Petitioner's proposed first phase would include the effects of the projections following the base period ending September 30, 2020 through April 1, 2022. While the second phase would take effect on April 1, 2023, the beginning of the forward-looking test period reflect the test year results of operation. Thus, Petitioner has filed a request for rates based on two forward-looking or projected twelve-month periods. The OUCC opposed Petitioner's proposal for pre-test year rate increase because it is not authorized by statute. The OUCC also proposed rates be increased in two phases, the first increase to take effect at the beginning of the test year.

Petitioner’s accounting witness Mr. Baldessari recognized that this proposal for an increase an prior to the commencement of the selected twelve-month test period is without precedent. But he sought to justify this request by asserting 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.”¹⁰ Ind. Code § 8-1.5-3-8(b) 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*

We respond first by noting that Petitioner is requesting two increases based on two twelve-month periods of projected data. Ind. Code 8-1.5-3-8 provides no more support for this than it did before the creation of Ind. Code § 8-1-2-42.7. With or without the existence of IC 8-1-2-42.7, IC 8-1.5-3-8 neither requires nor authorizes rolling year to year rate increases. Under IC 8-1.5-3-8, a municipal utility chooses its test year and rates are based on that. Material changes in a utility’s expenses and operations must be addressed by the filing of another rate case. The solution Petitioner asserts it seeks (i.e., multiple incremental rate increases) is afforded by a utility doing what is its right to do.

Likewise, Petitioner’s request for two rate increases based on two forward-looking test periods is not authorized by IC 8-1-2-42.7. It is well-established that the Commission is a creature of statute and only has such authority as is delegated to it by the Indiana General Assembly. Cities & Towns of Anderson v. Pub. Serv. Comm. of Ind., 397 N.E.2d 303, 305 (Ind. Ct. App. 1979) citing City of Crown Point v. Henderlong Lumber Company (1965), 137 Ind.App. 662, 206 N.E.2d 890; American Vitrified Prod. Co. v. Public Service Commission (1961), Ind.App., 176 N.E.2d 145. IC 8-1-2-42.7 states in pertinent part that “the commission shall approve a test period that is one of the following: (1) a forward-looking test period determined on the basis of projected data for the twelve (12) month period beginning not later than twenty-four (24) months after the date on which the utility petitions the commission for a change in its basic rates and charges.” (emphasis added.)

That the Indiana General Assembly did not contemplate the type of relief Petitioner has requested in this case is further made clear by the fact that the language of the statute authorizing temporary rates assumes no increase will be in effect before the beginning of the test year. Temporary rates may not begin before the first day of the test year. Thus, the Indiana General Assembly did not express an intent through its enactment that rates based on a forward-looking test period may be implemented before the beginning of the test period.

¹⁰Petitioner noted that in Ind. Code § 8-1.5-3-8(c) defines “Reasonable and just” rates as the “rates and charges that produce sufficient revenue” to recover the statutory revenue requirement.

Moreover, Petitioner could have designating as its forward-looking test year the twelve-month period ending on March 31, 2023. There seems to be no question that in such a case Petitioner would not be permitted to also include a rate increase for changes projected to occur through March 31, 2024. Yet this is precisely the result Petitioner’s request in this case would implement.

If Petitioner had chosen the year ending March 31, 2023 as its forward-looking test year. . Thereafter, nothing would prohibit it from filing another rate case if it truly desired more frequent incremental rate increases. The only limitation on the number of rate cases a utility may file is the so-called 15-month rule. IC 8-1-2-42(a) provides in pertinent part that a municipal utility may not file a request for general rate increase in its basic rate and charges more often than within 15 months after the filing of its most recent request for general increase in its basic rates and charges. Arguably, what Petitioner has requested in this case violates the 15-month rule in that it has requested two general rate increases in the same petition.

Mr. Baldessari testified in his rebuttal that 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. But the issue is not whether Petitioner is attempting to implement interim rates, the issue is whether Petitioner is authorized more than one rate increase. Neither IC 8-1-2-42.7 nor IC 8-1.5-3-8 authorize the type of relief Petitioner has requested. Neither do these two statutes when read together. One plus one does not equal three. Nor is it the case that the legislature must explicitly limit the power of the commission or utilities by use of explicit prohibitions. The Indiana General Assembly establishes in the affirmative what things utilities may request and what relief this Commission may grant. No rate relief such as Petitioner has requested has been authorized.

As also 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). It does not authorize the relief Petitioner has requested of authorizing rates based on two forward looking test twelve-month test periods.

In Petitioner’s rebuttal case, Mr. Baldessari testified that Evansville is willing to defer the first increase until Phase II if that is the Commission’s preference,¹¹ but he suspects customers would prefer two annual increases over one larger increase. *Id.* First, in rejecting this proposal, we do not consider that we have *deferred* the initial rate increase. Rather we have granted the kind of relief we are authorized to grant, and which Petitioner is entitled to receive – an increase based

¹¹ After proposing the Commission express appreciation for its willingness to defer its rate increase until the beginning of the test year, it then proposes the Commission to reject that offer, Petitioner asserted that “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.” This inaccurately implies that test year rates would be larger than they otherwise would be but for a rate increase occurring in 2022. Whether a rate increase occurs in 2022, the monthly rate in the test year 2023 will be no larger or smaller.

on the forward-looking test year it declared based on its projected data. Nonetheless, we appreciate Petitioner's willingness to accept the result we reach in this order. We need not address whether the ratepayers would *prefer* to have an increase in their rates in April of 2022 to prepare them for a larger test year increase. However, we suspect no such increase would be *preferred*. A more moderate increase incurring before the test year will not decrease in any way the rates established for the test year.

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.* The incremental increases requested would not affect the ultimate level of increase required. We agree with the OUCC's proposed two phases of rate increase, the first to commence on April 1, 2023.

D. Rate Relief. Based on the evidence presented as discussed above, the Commission finds that Petitioner's current rates and charges are insufficient to satisfy Petitioner's annual *pro forma* net revenue requirements. As shown below, Petitioner's total annual operating revenues at current rates subject to increase for Phase I and Phase II are \$44,087,215 and \$49,680,797, respectively. Accordingly, Petitioner's existing rates are insufficient to recover Petitioner's revenue requirement and should be increased to produce an additional \$5,593,582 and \$3,864,044 (each inclusive of the prior phase increase) in annual operating revenues for Phase I and Phase II, respectively.

	Phase 1	Phase II	Overall
Operating Expenses	\$ 31,465,904	\$ 31,542,788	\$ 31,465,904
Sewer Portion of General Expenses	(13,970,010)	(13,970,010)	(13,970,010)
Extensions and Replacements	9,805,573	9,805,573	9,805,573
Payment in Lieu of Taxes	4,752,346	4,881,350	4,881,350
Debt Service			
Existing Debt	17,529,307	17,528,594	17,528,594
Proposed Debt	-	3,682,642	3,682,642
Debt Service Reserve	736,528	736,528	736,528
Total Revenue Requirements	50,319,648	54,207,465	54,130,581
Revenue Requirement Offsets:			
Interest Income	(23,080)	(23,080)	(23,080)
Other Water Revenues	(201,511)	(201,511)	(201,511)
Other Non-operating Income	(491,144)	(491,144)	(491,144)
Net Revenue Requirements	\$ 49,603,913	\$ 53,491,730	\$ 53,414,846
Less: Revenues at current rates subject to increase	(44,087,215)	(49,680,797)	(44,087,215)
Net Revenue Increase Required	5,516,698	3,810,933	9,327,631
Gross Revenue Conversion Factor	101.3937%	101.3937%	101.3937%
Recommended Revenue Increase	\$ 5,593,582	\$ 3,864,044	\$ 9,457,626
Recommended Percentage Increase	12.69%	7.78%	21.45%

F. Debt Service True-Up Report. Based on the evidence presented as discussed above, the Commission finds that Evansville should true-up its rates to reflect the actual debt service after closing on its bonds. Based upon Mr. Dellinger’s recommendation, 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 schedules, 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 concerns. 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.

G. Annual Project Status Reports. OUCC Witness Dellinger recommended Evansville be required to file annual reports due to Evansville historical inefficiencies in spending borrowed funds in a timely matter. These reports should consist of a list of projects funded, the

status of each of those projects, including bid date (actual or anticipated), completion date (actual or anticipated), bid tabulations and soft costs. We find that these reports are necessary and not unduly burdensome and should be submitted annually until the funds from the borrowings contemplated in this cause are exhausted.

H. Status of Refresh Evansville. Mr. Parks noted that in Cause No. 45073 the OUCC had asserted Evansville's water main cost estimates were inflated and the replacement schedule was overly ambitious. And while it did not oppose any water main project, the OUCC said Evansville should not have the level of financing authority it had requested in that case. In its rebuttal in Cause No. 45073, Petitioner asserted that the only thing holding Evansville back in achieving the 1.5% water main replacement rate was funding. In his testimony in this Cause, OUCC witness James Parks noted that Evansville had not completed all the water main replacement and relocation projects addressed in both Cause No. 44760 and 45073. Mr. Parks said 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 likewise testified that capital improvement projects included in prior cases have not yet been completed. Pub. Ex. No. 1, p. 13. Mr. Parks recommended Petitioner be required to report annually (i.e., through its IURC Annual Reports) the estimated cost of each such project, the actual cost of the project, the projected completion dates for unfinished projects, and the actual completion dates for each finished project. Mr. Parks also recommended Evansville track its water main replacements and advise the commission of work completed annually in its Annual report to the IURC.

Mr. Labitzke asserted that Ms. Stull's testimony does not tell the full story in that the main replacement program is based upon prioritization. He explained that during the period of the program, other projects can and will arise in priority that had not been previously included in funding. He added that 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. He asserted 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. Mr. Labitzke did not precisely answer our question and focused on the amount of project funds that had been *encumbered* not actually spent. During cross examination by the OUCC, Mr. Labitzke acknowledged that as of September 30, 2021, there remains \$80 million in cash yet to be spent, though half of that is encumbered, meaning it is tied to contracts with contractors or design consultants. He asserted the remaining \$40 million will be similarly encumbered by the end of 2022, and there will be no new projects to contract by the end of 2022. Tr., p. B-23. He estimated every project would not be completed until "into the second quarter of 2022. *Id.*

Encumbering moneys is not the same thing as constructing, expanding, or replacing. Evansville has not met the pace of improvements and replacements indicated in Cause Nos. 44760 and 45073. We find that the reporting requested by Mr. Parks will be instructive and assist in keeping us informed of Evansville’s construction, extensions and additions.

I. 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 two phases with the increase for Phase I to commence on April 1, 2023 and constituting a 12.69% increase to annual operating revenues of \$5,593,582, Phases II shall take effect on April 1, 2023 and represents an additional 7.78% increase to annual operating revenues of \$3,864,044.

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 \$167,000,000 million as approved herein. This Order shall be the sole evidence of Petitioner’s certificate.

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 on April 1, 2023 after approval by the Water/Wastewater Division.

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:	\$
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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