ORIGINAL

Commissioner	Yes	No	Not Participating
Huston	√		
Freeman	√		
Krevda	√		
Ober		√	
Ziegner			√

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF GRANGER WATER UTILITY LLC FOR (1) APPROVAL OF AN INITIAL SCHEDULE OF RATES AND CHARGES FOR WATER UTILITY SERVICE; (2) FOR APPROVAL OF LONG TERM DEBT, INCLUDING AN ENCUMBRANCE OF ITS FRANCHISE, WORKS OR SYSTEM RELATED THERETO; (3) FOR ISSUANCE OF A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE WATER UTILITY SERVICE IN CERTAIN AREAS OF ST. JOSEPH COUNTY, INDIANA; (4) FOR CERTAIN DEFERRED ACCOUNTING TREATMENT; AND (5) FOR CONSENT OF THE COMMISSION TO OBTAIN A LICENSE, PERMIT OR FRANCHISE TO USE COUNTY PROPERTY PURSUANT TO IND. CODE § 36-2-2-23	**CAUSE NO. 45568** **APPROVED: APR 13 2022**

ORDER OF THE COMMISSION

Presiding Officers:
Stefanie N. Krevda, Commissioner
Jennifer L. Schuster, Administrative Law Judge

On June 22, 2021, Granger Water Utility LLC ("Granger" or "Petitioner") filed with the Indiana Utility Regulatory Commission ("Commission") its Petition and case-in-chief in support thereof, seeking approval of an initial schedule of rates and charges for water utility service, approval of certain long-term debt, a certificate of public convenience and necessity ("CPCN") to provide water service in certain areas of unincorporated St. Joseph County, Indiana, deferred accounting treatment, and the Commission's consent to obtain a license, permit, or franchise for the use of St. Joseph County property pursuant to Ind. Code § 36-2-2-23. On September 28, 2021, the OUCC filed testimony in response to Petitioner's case-in-chief, and Petitioner filed its rebuttal testimony on October 26, 2021.

The evidentiary hearing in this matter was held on November 15, 2021, at 9:30 a.m. in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. At the hearing, each party offered its prefiled testimony and exhibits, all of which were admitted into evidence without objection. The OUCC cross-examined four of Petitioner's witnesses and waived cross examination on the remaining witness. Petitioner waived cross-examination of the OUCC's witnesses.

Having considered the evidence of record and applicable law, the Commission now finds:

1. Notice and Jurisdiction. Notice of the time and place of the hearing conducted by the Commission in this Cause was given as required by law. Petitioner wishes to own and operate a privately owned utility providing water utility service to the public. Thus, the Commission has jurisdiction over Petitioner and the subject matter of this Cause pursuant to Ind. Code ch. 8-1-2.

2. Petitioner's Characteristics. Petitioner is an Indiana limited liability company. Petitioner proposes to own and operate a private water system in Granger, an unincorporated community located in the northeast corner of St. Joseph County, Indiana. Petitioner's proposed water utility system will include wells, treatment and storage facilities, water main extensions, and service lines.

3. Petitioner's Case-in-Chief.

A. J. Patrick Matthews. Mr. Matthews, Granger's Chief Executive Officer, testified that Granger's proposed initial service area includes approximately 151 acres located in St. Joseph County, Indiana, including a housing development named The Hills at St. Joe Farm ("The Hills") on approximately 76 acres. Mr. Matthews stated that the first phase of the project will include 40 units, but the entire 76-acre project is anticipated to have up to 229 homesites. The Village Development LLC, the developer of The Hills ("Developer"), has site control over an adjacent 75 acres that would allow for expansion of the project to as many as 600 homes. Currently, the surrounding area is served by wells and septic systems.

Mr. Matthews testified that all of the municipalities and water systems listed in Petitioner's Exhibit 1, Attachment JPM-5, were notified of the water supply system to be developed by Granger pursuant to the Indiana Department of Environmental Management's ("IDEM") capacity development program. According to Mr. Matthews, all of the contacted entities indicated that they were not interested in providing a potable water supply or did not respond to Granger. He opined that adding wells or seeking a main extension would not be viable options.

Mr. Matthews stated that Granger owns the land on which its treatment plant will be constructed, and the distribution system will be in the dedicated public right-of-way and dedicated utility easements. The plans for the proposed system are included in the Water System Management Plan ("WSMP") submitted by Granger to IDEM. According to Mr. Matthews, the Granger system will be served by two 12-inch diameter wells, which will feed into one common treatment plant, which will also house two finished water storage tanks. All pumping, treatment, and storage facilities will be powered by three-phase electrical service with a generator as backup. Fire hydrants and two mag meters will be installed. The backwash effluent will be metered by a Siemens 5100W mag meter. Each of the six filter vessels will require 398 gallons per minute ("gpm") for approximately five minutes for proper backwash. This effluent will be directed to the local sanitary sewer operated by the St. Joseph County Regional Water and Sewer District ("SJCRWSD"), which has agreed to accept the discharge. The water supply source is groundwater from the unconsolidated, unconfined portion of the St. Joseph Aquifer System and Tributary Valleys Sole Source Aquifer. Two groundwater supply wells will be operated within the same aquifer to supply the water demands for The Hills.

Mr. Matthews stated that the water will not need to be treated for nitrates, but will be filtered for naturally occurring iron and manganese. He said that Granger has hired consultants and contractors, including Peerless Midwest, Inc., as its water supply consultant and Astbury Water Technology as its certified state operator, to ensure that the highest level of service is provided to customers at a reasonable cost.

Mr. Matthews testified that Granger has the necessary financial resources to operate the water utility. The principals of Granger will be infusing approximately $530,000 of equity into the utility. An unaudited financial statement accompanied by a letter from a certified public accountant is attached to Petitioner's Exhibit 1 as confidential Attachment JPM-11.

According to Mr. Matthews, Granger proposes to charge an initial monthly flat rate of $75 per month for water service. Granger proposes to use the Commission's small utility alternative regulatory procedure ("ARP") to increase rates and charges on a periodic basis by the Commission-approved factor. Granger also proposed a $1,750 system development charge ("SDC") and other nonrecurring charges.

Mr. Matthews opined that the initial proposed flat rate of $75 is reasonable. First, he stated that customers are voluntarily choosing to move into The Hills knowing the monthly rate. Second, he said that many municipalities would charge significantly higher residential rates than what they actually charge if they charged the cost of service. Finally, he noted that the sewer charges for The Hills are projected to be approximately $77 per month, which will be significantly less than the typical charge levied by the SJCRWSD. Mr. Matthews asserted that the combined water and sewer bill of approximately $150 per month is reasonable and attractive to home buyers. He stated that Granger does not plan to install meters until sometime between years six and ten of operation and that it has notified potential homebuyers that rates may increase in the future.

Mr. Matthews also noted that that Granger has received a tax abatement for both real and personal property from St. Joseph County, which will help with its cash flow. He stated that as customer counts rise and operating revenues increase, the tax abatement rolls off, which will coordinate with Granger's financial plan.

Mr. Matthews testified that Granger obtained a loan in an amount not to exceed $1,481,397 to construct its water treatment plant ("Water Plant Loan"). He opined that the financed project is a prudent and reasonable use of funds, as a water treatment plant is necessary to provide water utility service. He also cited IDEM's approval of the WSMP as demonstrating that the project is prudent and reasonable. He stated that the loan is secured by a mortgage on the property, which results in a lower interest rate on the debt.

Mr. Matthews testified that Granger proposes to serve homeowners moving into The Hills beginning in August 2021 for free until the Commission approves its rates and charges, similar to the procedure utilized in Cause No. 44699.

According to Mr. Matthews, Granger is requesting approval to record operating losses in a manner that will allow it to seek a return of and return on those losses in a future rate case. He opined that such accounting treatment is reasonable because Granger will not cover the costs of

operating in the short term. He stated that early customers will benefit by not having to pay true cost-of-service rates, and future customers will benefit from being able to connect to a utility system without having to pay a carrying charge. Furthermore, Granger is not requesting a guarantee of recovery, but, rather, the opportunity to defer the costs for presentation in a future rate case.

Mr. Matthews also discussed Granger's request for a license, permit, or franchise authorizing use of St. Joseph County's roads, highways, and other property for water utility purposes.

B. Jennifer Z. Wilson. Ms. Wilson, a consulting managing director with Crowe LLP, testified about Granger's estimated finances. Details of her calculations are outlined in the Rate Report (the "Report"), Attachment JZW-1 to Petitioner's Exhibit 2.

Ms. Wilson testified that, because Granger does not have historical financial information from which to calculate revenue requirements, the Report is based on data and assumptions provided by Granger based on its expectations of growth and future costs, input from consulting engineers, and input from contractors. She identified the most significant assumptions as the following: (1) Granger will have 38 new customers per year from year one to year five and 35 per year from year six to year ten; (2) Granger's water plant will be initially sized to serve approximately 260 customers; and (3) the expansion of treatment capacity will require additional capital expenditures of $500,000. She opined that Granger's assumptions are reasonable.

According to Ms. Wilson, the usual method of calculating a rate sufficient to recover a utility's revenue requirements does not work for Granger, which will have a low number of customers in the early years of development who will not be able to support Granger's revenue requirements without facing exorbitant rates. Granger has proposed a monthly flat rate of $75 as an initial rate that balances the cash needs of Granger with the customer growth expected to occur within the residential development. The flat rate charge includes water service and fire protection. Granger has plans to increase rates in the future, but is not seeking approval for any such increase in this Cause. Granger anticipates that customer growth will close the gap between revenues generated from customers and Granger's revenue requirement.

Ms. Wilson stated that Granger plans to have several cash flow sources that will offset unrecovered revenue requirements, including equity infusion from curtailment amounts from lot sales, SDCs, and other equity contributions. Equity infusion from curtailment, along with an interest reserve included in the loan amount, will be used to make loan payments during the first few years of operation. SDCs will generate positive cashflow for operating expenses not covered by water revenues. To the extent the Commission requires approval of the use of SDCs to pay for operating expenses, Granger requests such approval. Upon reaching a point of sustainable cash flow from operations, Granger plans to stop using SDCs to fund operating expenses and will reserve these funds for future capital improvements. Finally, Granger plans to make equity contributions to assist in the purchase of the distribution system of Granger and other shortfalls that may arise.

According to Ms. Wilson, due to the start-up nature of Granger and the residential development as a whole, Granger invested in infrastructure to make the utility viable for future customers. In doing so, Granger relied on debt financing through its owners to fund initial build-out of infrastructure. She testified that Granger views SDCs not as a contribution for future capital expenditure, but rather a reimbursement for prior capital expenditures. She stated that, within established utility systems, SDCs are a mechanism for new customers to buy into the system for the additional available capacity that enables the new customer to connect to the system. Similarly, new customers to Granger are effectively reimbursing the owners of Granger for making capacity available to them. This functions as a change in capital structure over time as Granger shifts from funding from debt and equity to funding from debt, equity, and contributions. Ms. Wilson testified that this type of change in capital structure frees up cash for Granger to use to offset operating losses incurred during the initial period of Granger's operation.

Ms. Wilson stated that the SDC was initially calculated using the Incremental Cost Method from the American Water Works Association Manual MI – Principles of Water Rates, Fees, and Charges, Seventh Edition ("AWWA Manual"). However, this method results in nearly a $7,200 charge, which Ms. Wilson testified is unreasonable. Given that Granger's long-term success and stability will be achieved through customer growth, Granger proposes an initial SDC of $1,750, which, after taxes, results in a contribution of $1,015 to Granger. This amount balances cash flow requirements and will not deter future customer growth.

Ms. Wilson testified that, though the SDC recorded as contribution in aid of construction ("CIAC") will offset Granger's rate base, the portion collected related to income taxes will not. The income tax portion of the charge does not result in additional utility plant in service, therefore, recording it as CIAC results in devaluing Granger's rate base for collections not related to utility plant.

Regarding Granger's capital structure, Ms. Wilson stated that approximately 75% of the initial land purchase and construction of the water plant is funded through the Water Plant Loan, while the remaining 25% is funded through equity contributions. The Water Plant Loan will be repaid through equity contributions of fixed curtailment releases agreed upon by Granger and its lending bank for each lot sold, as well as from available funds of Granger. Distribution system assets will be purchased from the Developer through a loan from the Developer (the "Distribution Loan"). The outstanding loan balance will increase with future buildouts of the distribution system, and will be repaid through equity contributions from the Developer of $290,000 per year, as well as available funds of Granger.

According to Ms. Wilson, Granger plans to gross-up CIAC so customers paying SDCs also pay for the income taxes associated with their contributions. For the sake of estimating pro forma financial statements, these statements assume that the gross-up of CIAC adequately covers the income taxes due on CIAC; neither the inflow of gross-up taxes nor the outflow of taxes paid related to CIAC are included in the income statement or statement of cash flows. No income taxes are estimated related to utility operations for the projected period; therefore, income taxes are not included within the estimated financial statements.

Ms. Wilson testified that the rate base is calculated by identifying the net amount of utility plant in service after factoring in depreciation on gross utility assets. Net utility plant in service is adjusted for the net amount of distribution plant assets purchased by Granger as well as the net amount of CIAC collected through SDCs. Both the net distribution system and CIAC are depreciated/amortized at the composite depreciation rate of 2%.

As to the cost of equity assumption on the allowable net operating income ("NOI") schedule, Ms. Wilson testified that, because Granger will not generate a return on rate base in its first years of operations, Granger does not propose a cost of equity to be approved in this Cause. For illustrative purposes only, Granger included an estimate of 8%, which Granger believes is materially lower than its actual cost of equity for estimating required rate increases to achieve allowable NOI.

Ms. Wilson discussed the rate increase required section of the allowable NOI schedule, explaining that this section is not intended to show proposed rate increases, but rather show what rate increase would be required over the current rates such that Granger's NOI and income tax on utility operations equals its allowable NOI. The addition of customers combined with modest rate increases according to the Commission's ARP results in closing the gap between actual rates and the rates required to produce allowable NOI. Required rate increases decline through the estimated period as new customer growth spreads Granger's cost across a wider customer base. Ms. Wilson testified that the Report does not provide an estimate beyond ten years; however, Granger anticipates customer growth beyond what is projected in the Report. Such growth would necessitate expansion of capacity at the plant and also would serve to lower the required rate increase.

Ms. Wilson testified that the Schedule of Proposed Rates and Charges shows the proposed flat rate charge of $75 per month, which includes water and fire protection services, and the grossed-up SDC of $1,750. She also discussed the methods used to determine the service call, bad check, and late payment charges. For business hours/non-emergency service calls, the charge is the estimated cost for providing one hour of service at an estimated hourly rate of $135 from the service contractor, plus $100 for overhead and billing expenses incurred by Granger. The charge for non-business hours/emergency service calls follows a similar format, with an estimated hourly rate of $405 from the service contractor plus $150 for overhead and billing expenses incurred by Granger. Should the service call exceed one hour, additional hours will be billed at the service contractor rate. Ms. Wilson stated that the bad check charge includes a $25 insufficient funds fee charged by the bank and an overhead and billing charge of $100. She opined that the late payment charges of 10% on the first three dollars and 3% on amounts in excess of three dollars are typical of the charge allowed for water utilities.

Finally, Ms. Wilson discussed the deferred accounting treatment reflected in the Report. While the Report does not show the effect of accounting for operating losses as a regulatory asset, it shows all losses as recorded to Retained Earnings. Granger requests the ability to book net operating losses from inception to the year in which it generates positive NOI as a debit to a regulatory asset rather than a debit to Retained Earnings. The Report shows net operating losses through year four of approximately $193,000. If the Commission allows for this loss to be accounted for as a regulatory asset, it will be recorded as a miscellaneous deferred debit. The

permission to create this regulatory asset could also be used in future proceedings to recover the cost of the initial investment and expected loss to be incurred in the start-up of Granger.

4. OUCC's Testimony.

A. Carla F. Sullivan. Ms. Sullivan, Utility Analyst in the Water/Wastewater Division of the OUCC, testified about Granger's pro forma financial statements, whether Granger has demonstrated it possesses the financial and managerial capability to run a water utility, and how certain transactions should be recorded by Granger should it be granted authority to form a water utility.

Ms. Sullivan addressed the affiliated entities involved with Granger and testified that, for ratemaking and other regulatory purposes, it is important for Granger to be able to establish which entity is acting. She testified that Granger needs to have a separate set of books and records that accurately identify the financial transactions that have taken place and will take place in the future if the Commission approves the formation of Granger as a regulated provider of water service.

Ms. Sullivan discussed the financial assumptions used to create Granger's pro forma financial statements and opined that the growth projections Granger used were not well supported. Ms. Sullivan testified that she used the customer growth rate used by Granger in its WSMP, rather than the growth rate used in its pro forma financial statements.

Ms. Sullivan also opined that she does not believe Granger should be granted preapproval of a rate increase using the ARP because Granger does not have a test year and the OUCC cannot confirm that projected expenses are reasonable and necessary to provide safe, reliable water service. She testified that, if the Commission approves the formation of Granger, cost-based rates will be unaffordable. Ms. Sullivan testified that the specific goal of utilizing an ARP is to increase the rates by increasing the revenue requirement for operating and maintenance expenses. She noted that, since Granger's rates are not cost based, utilizing an ARP is not feasible.

Ms. Sullivan also opined that Granger should not be authorized to record its net operating losses as a regulatory asset because doing so would create an inappropriate intergenerational rate inequity, forcing the next generation to pay for the current generation's cost. She also testified that the OUCC does not accept Granger's chosen filing status as a partnership for income tax purposes because Granger will incur a net loss every year for over a decade and has no need for an income tax revenue requirement.

According to Ms. Sullivan, Granger should not be permitted to gross up SDCs for income taxes because doing so is unnecessary. First, she noted that Granger will not generate taxable income for at least 19 years and will therefore not pass revenue through to the taxing authority. Second, for utilities that amortize CIAC, the income tax on SDCs is merely a timing difference reflected in deferred taxes. The utility pays income tax on the CIAC in the year of receipt, and the CIAC is included in their depreciable basis for tax purposes. For book purposes, the CIAC is not reflected in income for purposes of income tax expense, and the amortization of the CIAC is reflected as an offset against regulatory depreciation expense. Finally, once the Infrastructure Bill is passed, all contributions to Granger will fall under Section 80601 and be non-taxable.

Ms. Sullivan testified that the OUCC also does not accept Granger's plan to purchase the distribution system from the Developer. If the Commission approves the formation of Granger, Granger will be required to follow the main extension rules as set forth in 170 IAC 6-1.5-13 regardless of negative tax consequences.

Ms. Sullivan opined that SDC cash should not be used to pay operating expenses. SDCs ensure growth pays for growth and equity between the different generations and ensure that a cash reserve is available to finance capital needs. Ms. Sullivan stated that, if SDC cash is used to pay operating expenses, the cash must be classified as operating revenue. Granger could possibly generate taxable income and incur a tax liability for which a rate has not been approved.

Ms. Sullivan stated that the OUCC believes that Granger's support for its proposed non-recurring charges is inadequate. She stated that Granger's customers should not be subject to exorbitant unsupported charges for such basic services as having their water shut off.

Ms. Sullivan testified that the OUCC's pro forma financial statements maintained the same level of cash contributions that Granger proposes. She stated that there is a better use for cash contributions labeled capital reserve. If the Commission approves the formation of Granger, the OUCC recommends that SDC revenue be used for capital expenditures and capital reserve cash contributions be used to pay operating expenses.

According to Ms. Sullivan, the purchase of the distribution system will increase the utility's rate base. Using Granger's assumed customer growth of 38 customers per year, the revenue requirement to meet Granger's return on rate base would be $101 per month per equivalent dwelling unit ("EDU"). Ms. Sullivan testified that Granger would forego the return for at least ten years but has not determined the timing for a future rate case requesting a full return. If the Commission approves the formation of Granger, it will eventually seek a return on the distribution system investment. She stated that it is also unclear under what circumstances Granger might elect to no longer forgo recovery of its return and operating expenses earlier than ten years.

Ms. Sullivan testified that the OUCC does not agree with Granger's assumption that Granger will require an expansion in year seven at a cost of $500,000, which will be paid for by a cash infusion from Granger's owners. She noted that Mr. Parks testified that the necessary plant expansion would be more expensive and would be needed sooner than Granger estimates. According to Mr. Parks, Granger's owners will need to make a $1,080,000 cash infusion in year five. This would cause the revenue requirement for the return on rate base to increase.

Ms. Sullivan testified that the OUCC recommends that Granger (1) use NARUC's System of Accounting and record transactions according to its guidelines; (2) require its affiliated developer to contribute the distribution system in exchange for Granger providing service to the subdivision; (3) hold SDC receipts in a restricted account to be used for capital expenditures only; and (4) notify customers of Granger's full operating costs and the extent of owner subsidization prior to the sale of a lot or home. The OUCC recommends Granger's proposal to gross-up the SDC for income tax purposes be denied.

Finally, regarding Granger's managerial ability, Ms. Sullivan stated that Granger's actions prior to filing this Cause demonstrate its lack of understanding of the Commission's role in determining whether an entity should be permitted to provide water service. She opined that Granger has not displayed appropriate regard for the regulatory process and noted that Granger's decision to move forward without first acquiring the Commission's authorization, which Granger must have to operate as a public utility, should not prohibit the Commission from determining that there is a better solution than the formation of another small utility that lacks economies of scale and plans to operate at a loss.

B. Shawn Dellinger. Mr. Dellinger, Utility Analyst in the Water/Wastewater Division of the OUCC, testified about Granger's financing and the life cycle costs of different options for providing service to the area and resulting rates.

Mr. Dellinger testified that Granger encumbered its assets prior to obtaining Commission approval. He opined that Granger's debt will mature too quickly, which will result in Granger needing future approval to refinance or issue new debt. He stated that the loan from the Developer should not be approved because the Developer is an affiliate whose ownership mirrors that of Granger, the loans are requested to continue indefinitely, there is a lack of transparency as to underlying distribution plant cost, and the interest rates will increase if Granger does not make timely payments. Mr. Dellinger also opined that he believes that using Granger's property to secure two loans under the cross-collateralization agreement is highly problematic.

According to Mr. Dellinger, the proposed transition of the capital structure over time to one funded almost exclusively by equity is not in the ratepayers' interest because it results in higher rates than a more balanced capital structure. He testified that potential solutions would be to extend terms on the Water Plant Loan or to fund the expansion with debt rather than equity. He stated that he did not take issue with the 4.25% cost of debt, but does not necessarily agree that an 8% cost of equity for a utility that has almost no debt is an artificially low cost of equity.

Mr. Dellinger opined that the cost-benefit analysis performed by Mr. Matthews did not incorporate all the factors to be considered in a life cycle cost analysis. In particular, he noted that the analysis did not recognize the significant operation and maintenance costs associated with Granger operating its own water plant, costs of maintaining the plant and interacting with customers, and capital costs Granger estimates it will incur in the near term to expand the plant. He testified that a comprehensive life cycle cost analysis should consider all known and reasonably estimated costs and the year the costs will occur, then converted to present value. Including Granger's own estimated operating costs and updated capital costs, the life cycle cost analysis Mr. Dellinger performed indicates that the cost of the water treatment plant is not $1.7 million, as Granger indicated, but is instead $4,794,365. As to the cost of connecting to Mishawaka's system, Mr. Dellinger testified that Mr. Parks estimates that the cost of connecting is $1,920,000. Mr. Dellinger provided a table summary of costs for ratepayers under different scenarios.

Mr. Dellinger testified that Granger's interactions with affiliates create complicating factors. He stated that presenting adequate cost support is critical to provide assurances that the utility is not subsidizing other entities controlled by the owner. He opined that the Commission should require Granger to file all affiliate agreements if the Commission authorizes Granger to

operate as a water service provider. Mr. Dellinger also raised concerns regarding Granger's proposed form of notice to potential customers and its cross-collateralization agreement.

C. James T. Parks. Mr. Parks, Senior Utility Analyst in the Water/Wastewater Division of the OUCC, testified about Granger's analysis of water supply alternatives. He stated that Granger did not include IDEM's approval letter, which was contingent upon Granger resolving certain financial capacity issues, in its case-in-chief. He noted that IDEM required Granger to clarify its method for disinfection and address financial issues identified by the Commission prior to IDEM activating the water system as a community water supply.

Mr. Parks opined that Granger did not complete a proper analysis of water supply alternatives that analyze options and costs to connect to an existing water system prior to forming a new independent water system, which is a required component of a WSMP and is required by the St. Joseph Council Subdivision Control Ordinance. He noted that Mr. Matthews conducted a feasibility study that included a capital cost analysis, but did not include other capital costs for expansion and equipment replacement and annual operating and maintenance costs. Mr. Parks also testified that Mr. Matthews did not have a professional engineer or qualified person under the direct supervision of a professional engineer prepare the life cycle cost analysis.

Mr. Parks also testified that Granger never requested a main extension and never obtained a cost to connect from any existing water utility. For the purposes of the WSMP, Granger relied on a one-page notification form letter that asked if nearby utilities would be "interested in assisting with supplying a potable water supply" without defining what it meant by that phrase. Mr. Parks opined that this notification letter does not fulfill the purpose of the WSMP because it does not seek information needed to evaluate connecting to an existing water utility or beginning the main extension process, including securing the funds needed. He also stated that Granger never provided basic details on the requirements or schedule for its desired water supply, did not timely notify any utility of the need for water service, and did not follow up with nearby utilities (other than a meeting requested by the City of Mishawaka). Mr. Parks discussed the characteristics of the Juday Creek water treatment plant currently under construction and recommended the Developer and/or Granger formally request a main extension from the City of Mishawaka including the cost and three-year revenue allowance under the main extension rules.

Mr. Parks stated that the customer growth projections provided in this case are substantially higher than Granger's original growth projections provided to IDEM. He opined that Granger has not provided any evidence to support its growth projections and testified that Granger's customer projections are overly optimistic, unsupported, and unlikely to occur. He also stated that Granger's service area should be limited to the initial 76 acres that Granger already owns and for which it has received primary plat approval.

Mr. Parks testified that IDEM only permitted Granger's system for the initial 40 lots in Section 1 of The Hills and that Granger will need to expand the system to provide finished water storage in either an elevated storage tank or ground storage tank to enable the wells and filters to run over longer periods of time and be able to meet maximum day, peak hourly, and fire flow demands. He stated that Granger's current fire protection system bypasses treatment in the event of a fire by direct pumping from the two wells into the distribution system. He noted that

hydropneumatic tanks are prohibited for fire protection and only allowed by IDEM for very small systems serving no more than 114 homes. He opined that Granger should instead connect to the City of Mishawaka's system within the next five years before it needs to expand its system with an elevated storage tank, which he estimated will cost over $1 million. Mr. Parks testified that Granger should be directed to shut down its water treatment plant and sell for salvage value the well pumps and motors, filters, and hydropneumatic tanks.

Finally, Mr. Parks stated that Granger's proposed $75 per month flat rate is not cost based; does not reflect current or future actual costs; and is based on overly optimistic customer growth projections. He testified that, if Granger decides to base rates on all revenue requirements that may be allowed, residential customers will be subjected to one of the highest combined water and sewer bills in Indiana, at an estimated $340 per month. Mr. Parks also testified that Granger's proposed minimum service call charges (such as for turning on and off service) at over $500 are punitive and recommended that the Commission deny Granger's request to approve those charges.

5. Petitioner's Rebuttal.

A. Mr. Matthews. Regarding Granger's failure to obtain Commission approval prior to taking out a loan for the treatment plant, Mr. Matthews apologized for the oversight, which he attributed to ignorance. He stated that loan was "too deep in the process to stop" when he learned of the need for Commission approval. He stated that, during the height of the COVID-19 pandemic, it was difficult to contact the necessary parties, stakeholders, and agencies to gather additional information on the process.

Mr. Matthews clarified that Granger proposes that the initial service area consist of the 151 acres located in St. Joseph County and depicted on the map attached to his direct testimony as Attachment JPM-4, which includes the 76 acres being developed now, as well as the 75 acres under site control through a right of first refusal granted from the landowner to the Developer.

Despite the fact that Granger requested a CPCN in its Petition, Mr. Matthews testified that it is his understanding that the Indiana Code does not require a CPCN to provide water service. He explained that Granger requested a CPCN so that it is only deemed to be "holding itself out" as providing water service within its proposed 151-acre service area so it can focus on getting up and running and building its customer base before it looks to expand beyond this proposed service territory.

Mr. Matthews noted that IDEM has approved the WSMP subject to the Commission establishing rates and charges. He opined that IDEM's issuance of permits for the system evidence IDEM's determination that the financial capacity review was more of a "matter of course" issue, and that, once the Commission approves Granger's initial rates, that WSMP contingency would be satisfied.

Regarding growth projections, Mr. Matthews stated that the area Granger proposes to serve is distinctly different from the areas identified in the three proceedings Mr. Parks identifies (Cause Nos. 41848, 42599, and 45274). The proceedings cited by Mr. Parks involved water utilities that would primarily serve existing homes with wells with no binding requirement to connect to the

water system. Mr. Matthews distinguished this case because each home in The Hills will be connected to Granger at the outset.

Mr. Matthews also noted that Granger is located in an affluent area with a strong demand for housing that is near several population centers (South Bend, Mishawaka, and Elkhart). At the time of his rebuttal testimony, The Hills had 29 lots in various stages of the sale cycle. He stated that, since May 2021, when the model home opened, The Hills has since been averaging 4.8 sales per month, resulting in an annual run rate of 58 lots per year.

Mr. Matthews disputed Mr. Parks's testimony about the amount of SJCRWSD's sewer rate. He also disputed the OUCC's position that Mishawaka could potentially serve Granger's proposed service territory. Among other things, Mr. Matthews opined that "Mishawaka's plan is to expand East, not North" and "if Mishawaka was truly interested in serving, it wouldn't have signed the no interest letter and would have intervened in this proceeding." Petitioner's Exhibit 3 at 14. He also disputed Mr. Parks's discussion of various IDEM rules as they relate to Granger's requests in this case.

Mr. Matthews testified that there has been no commingling of funds between Granger and any of its affiliates and provided Attachment JPM-21 to his testimony to show how each entity interacts with Granger. He also testified that Granger would file annual reports with the Commission as required of all public utilities that will track the flow of funds.

In response to Ms. Sullivan, Mr. Matthews opined that, while losses may be accruing from a utility books perspective, the enterprise value of the system should increase over time. He noted that Granger's financial models have been reviewed, vetted, and underwritten by large and sophisticated stakeholders, including Granger's lenders and a certified public accountant. Teachers Credit Union ("TCU") provided the debt funding for Granger and reviewed the financial models both internally and with the help of an independent outside business valuation by Kruggel Lawton CPAs ("KL") in South Bend.

Mr. Matthews disputed the OUCC's testimony about the reasonableness of Granger's financial assumptions. He opined that Granger should be able to determine its own United States Internal Revenue Service ("IRS") filing status in order to mitigate risk to the best of its ability. He also stated that the distribution system loan should be immaterial from a customer rate perspective, as it was designed for tax purposes. He testified that Granger has already committed not to include the value of the distribution system in its rate base.

Regarding potential tax code changes, Mr. Matthews testified that, if legislation passes with the CIAC language, then the Developer will contribute distribution system phases and that issue is mooted. As to the SDCs, he stated that Granger requests it be authorized to use SDCs to reimburse itself for the capital outlays required to build the water treatment plant. He noted that the Commission has previously granted authority to use SDCs for reimbursement. If the reimbursement authority is granted, it eliminates a taxable event and eliminates the issue of using SDCs to pay operating expenses.

Mr. Matthews also disputed Ms. Sullivan's testimony about equity contributions and the applicable requirements for forming a new water utility.

Mr. Matthews testified that cross-collateralization agreements are standard practice in the industry and stated that Mr. Dellinger's analysis ignores the rate increases already passed by Mishawaka. Mr. Matthews opined that, while Mishawaka's future pricing is unknown and not regulated by the Commission, Granger's pricing will be stable, known, and regulated by the Commission.

Finally, in response to Mr. Dellinger's concerns about the form of Granger's notice to potential customers of future rate increases, Mr. Matthews testified that Granger copied the notice almost verbatim from the notice the Commission approved pursuant to a stipulation signed by the OUCC in the Cause No. 42011.

B. Ms. Wilson. Ms. Wilson testified that Ms. Sullivan's analysis of customer growth failed to account for the exercise of the right of first refusal held by Granger. She also noted that the growth projections in the WSMP do not match those included in this Cause due to additional analysis being performed based on changing market conditions.

Ms. Wilson opined again that Granger has demonstrated that a regulatory asset should be created and that Ms. Sullivan's criticisms of Granger recording net operating losses as a regulatory asset are unfounded. She testified that, by creating a regulatory asset, Granger's owners will have the opportunity to present the regulatory asset for recovery in the future, which will compensate them for undertaking the risk and loss at the start-up utility. She opined that an intergenerational inequity would not result from recovery of the regulatory asset; rather, the initial customers require later customers to join to spread out fixed costs of the utility over a larger customer base.

Ms. Wilson disputed Ms. Sullivan's positions regarding Granger's requests related to SDCs and testified that Granger has presented a reasonable and Commission-approved manner of accounting for SDCs from a tax and operations perspective.

Ms. Wilson opined that Granger has demonstrated its Water Plant Loan is reasonable and in the public interest. She disputed Ms. Sullivan's assertion that Granger's owners are required to contribute $1,481,397 before the maturity date of the Water Plant Loan regardless of number of lots sold. She stated that, while the loan does have a maturity date of March 31, 2024, Granger anticipates that the terms of the loan may be extended beyond March 31, 2024 pending the results of development. Were development to not proceed according to the lending bank's expectations, the loan would be renegotiated to a principal and interest loan over a longer period of time. Ms. Wilson stated that this is a typical financing arrangement in the commercial lending environment as banks usually want a performing loan rather than acquisition of the underlying assets.

Ms. Wilson disputed Mr. Dellinger's testimony about Granger's proposed capital structure. She noted that Granger is not seeking to collect a return on investment in the initial years of operation. According to Ms. Wilson, Granger did not intend to propose a capital structure for the next ten years of operation in its filing; rather, its intention was to project ten years of operating results based on proposed rates and certain assumptions outlined within Petitioner's Exhibit 2,

Attachment JZW-1. Mr. Dellinger proposed funding the plant expansion with debt rather than equity, and, according to Ms. Wilson, Granger would consider this option and would request Commission approval as necessary as the utility grows.

Like Mr. Matthews, Ms. Wilson disputed the OUCC's testimony about conducting a life cycle cost analysis. She also disputed Mr. Dellinger's testimony projecting Mishawaka's future rate increases and the OUCC's position regarding service call and returned check fees.

C. Byron L. Miller. Mr. Miller, a Senior Engineer at Danch, Harner, and Associates, Inc., testified about IDEM's contingent determination finding that Granger's WSMP meets the requirements of the IDEM Capacity Rule. He stated that the disinfection contingency has been remedied, as shown in the construction permit issued by IDEM. Regarding the financial capacity contingency, Mr. Miller stated that he interpreted that this meant only that Granger needed to petition the Commission for rate approval.

Mr. Miller, like several of Granger's other witnesses, testified in support of Granger's position that seeking service from Mishawaka was not a viable option. He also disputed Mr. Parks's testimony regarding the life cycle cost analysis performed by Granger as part of the WSMP.

According to Mr. Miller, Granger's system conforms to the Ten States Standards mentioned by Mr. Parks. He also stated that IDEM has reviewed the plans and specifications for the system and issued construction permits for the system. He also addressed Granger's dealings with the SJCRWSD and reasons that the water system would be retained by Granger rather than contributed to the SJCRWSD.

D. Steve Smith. Mr. Smith, co-owner and managing broker of Irish Realty, a residential brokerage firm specializing in new construction and development, testified in support of the accuracy of Granger's customer growth projections based on his experience in residential real estate in the area of The Hills. He also discussed the preferences of homebuyers for water and sewer service versus well water and septic systems. He opined that prospective homebuyers would find Granger's proposed $75 flat rate to be reasonable.

E. Michael Williams. Mr. Williams, Chief Executive Officer of Peerless-Midwest, Inc., responded to the OUCC's positions on system design issues in the Granger system. In response to Mr. Parks's life cycle cost analysis and discussion of future expansion, Mr. Williams opined that future expansion of Granger's water treatment system will be possible because the wells have sufficient capacity to incorporate an increase in flow rate by modifying the well pumps and motors. He stated that the treatment plant has space for additional filters, and additional storage can be accommodated through several methods.

Mr. Williams testified that the 14,000 average gallons per day is for the distribution system that would serve 40 homes, not the plant permit. He stated that the plant has a much higher potential output as it is permitted for 600 gpm (i.e., 864,000 gallons per day). He stated that, when permitting distribution systems, IDEM asks for the average demand for that particular distribution system, not the system as a whole.

According to Mr. Williams, hydropneumatic tanks are a cost-effective option. The variable frequency drives on the well pumps and motors are able to provide constant pressure regardless of flow rate. At very low use periods, the variable frequency drives go into "sleep" mode, and the system will be carried by the storage in the hydropneumatic tanks. Mr. Williams stated that variable frequency drives with hydropneumatic tank storage is acceptable. He also noted that IDEM approved this design without any additional finished water storage.

6. Hearing Testimony and OUCC CX-4. During the evidentiary hearing on November 15, 2021, the OUCC cross-examined Mr. Matthews, Mr. Miller, Mr. Smith, and Mr. Williams and waived cross examination of Ms. Wilson. Petitioner waived cross examination on all of the OUCC's witnesses.

Most notably, the OUCC cross-examined Mr. Matthews about Granger's communications with representatives of Mishawaka regarding potentially providing water service to The Hills. The OUCC's Cross Examination Exhibit 4 ("OUCC CX-4") consisted of Granger's responses to two OUCC data requests: (1) OUCC Data Request Q-4-6, which requested "copies of all communications on the subject of extending municipal water to the Hills at St. Joe Farm Major Subdivision between Mishawaka Utilities and Granger[,]" and (2) OUCC Data Request Q-8-14, requesting "all communication between the City of Mishawaka and Petitioner . . . discussing whether Mishawaka would permit an extension of its system to provide service to the Hills."

The emails included in OUCC CX-4 reveal that, on June 4, 2020, in response to an initial email from Mr. Matthews, Dave Majewski of Mishawaka wrote that "Mishawaka Utilities does not have the infrastructure or any plans in the near future to run water main to the area in question." OUCC CX-4 at 3.

However, a later email thread among employees of consulting firm DLZ, William Schalliol, Executive Director of Economic Development, Department of Infrastructure, Planning, and Growth for St. Joseph County, and Mr. Majewski noted that, as of July 22, 2020, "[Mishawaka] would like to discuss the potential of supplying Mishawaka Utilities' water to The Hills at St. Joe Farms." *Id.* at 8. Mr. Matthews was copied in later emails in this thread.

Mr. Matthews testified that, at the end of the August 5, 2020 meeting that resulted from the July 2020 emails, "it was determined that Mishawaka did not have an interest in pursuing water to The Hills Subdivision." Hearing Tr. at D-52:6-9. Thus, Mr. Matthews concluded that "[a]ny reasonable and prudent . . . businessman would continue and push ahead to develop their own water system." *Id.* at D-52:17-19.

However, in October 2021, Mr. Matthews contacted David A. Wood, mayor of Mishawaka, requesting "a letter . . . to include as an exhibit to my testimony [in this Cause] from the City of Mishawaka confirming the City's position on extending water service to This [sic] Hills at St. Joe Farm Subdivision north of the toll road in Granger, IN." OUCC CX-4 at 12. In response, Mayor Wood declined to provide the requested letter, stating:

> We have offered to allow a study to be done to explore possible connection from the Hills at St. Joe Farm [the Hills] to the City's water utility system. While we are open to serving the broader area, our position is that a study must first be done and the City's rate payers will not bare [sic] the cost of extending infrastructure to the development. I have been advised that a study has been requested by Mishawaka Utilities [MU] and rejected by your development group. So it is not entirely factual to say that Mishawaka Utilities declines to extend service to the Hills. It is conceivable that MU could extend water service to the Hill [sic] if a study concluded it was feasible, infrastructure was built to City standards and the developers of the Hill [sic] or some other entity funded infrastructure extension to the development.

Id. at 11. Thus, at least as of October 2021, it appears that Mishawaka was still theoretically open to providing water service to The Hills under certain circumstances.

7. Commission Discussion and Findings.

A. Initial Matters. Among other requests in this Cause, Granger seeks a CPCN to provide water service to a very small number of customers (currently estimated to be up to 240) in an unincorporated area of St. Joseph County. Granger also asks the Commission to authorize it to recover over $1.4 million in indebtedness it incurred to pay for its treatment plant through rates and charges imposed on existing and future customers. These requests directly contravene the current state policy, as recognized by the General Assembly, of promoting regionalization of utility service to maximize efficiency and economies of scale and to protect affordability of utility services. *See, e.g.*, Ind. Code § 8-1-2-0.5.

Granger's witnesses have insisted that its proposal in this Cause is the only way it could feasibly obtain water service for The Hills, having no private water system or municipal system located within a reasonable distance to make a connection. While the Commission understands Petitioner's desire to have a new development serviced by a water utility rather than by wells and septic systems, we do not agree that starting a new investor-owned utility was its best or only option.

It is important that a start-up utility such as Granger fully vet all possible options for providing service so that it can ensure that the rates it charges its customers are just and reasonable. Unfortunately, Granger did not fulfill this obligation, as demonstrated by the evidence of record. Similar to the petitioner in the most recent case in which we approved initial rates and charges for a new water utility,[1] Granger has merely gone through the motions of considering alternatives, resulting in the creation of a new "distressed utility" as that term is defined by the Indiana Code.[2] We are unpersuaded by Granger's continued insistence that Mishawaka was unwilling or unable to provide water service to The Hills when documents such as the emails included in OUCC CX-4 clearly indicate otherwise. By deliberately pursuing the creation of an investor-owned utility to the exclusion of all other possibilities, Granger has created undesirable outcomes for its limited customer base and the Commission. Yet a full denial of the request sought by Granger could result in its customers being stranded without potable water, which would also be an unacceptable outcome.

Unfortunately, we are now constrained by the fact that Granger has already gone forward with construction of its distribution system and is currently serving homeowners. With the distribution system already installed to undisclosed specifications, an existing utility may be unwilling to accept ownership of the distribution system. This proceeding is rife with missed opportunities to act in the interest of customers, and a refusal by the Commission to address and rule on Granger's requests for relief would only exacerbate these difficulties. As such, we will exercise our statutory responsibility to determine whether Granger should receive a CPCN, to determine what Granger's initial rates and charges should be, and to determine what can be included as part of Granger's rate base.

B. CPCN. One of Granger's requests in this Cause is for CPCN to provide water service within a certain service territory. The OUCC made no statement in its case as to whether a CPCN is something the Commission is authorized by statute to grant. On rebuttal, Mr. Matthews testified that it is his understanding that the Indiana Code does not require a CPCN to provide water service and stated that Granger seeks a CPCN so that it is only deemed to be "holding itself out" as providing water service within its proposed 151-acre service area.

A CPCN is required for new water utilities to commence providing water service. In Ind. Code § 8-1.5-2-7(a), the General Assembly chose to exempt only one type of water utility from this requirement — municipal water utilities. This fact that the legislature exempted one type of water utility necessarily means that all other water utilities must obtain a CPCN; otherwise, Ind. Code § 8-1.5-2-7(a) would be meaningless, and, under Indiana law, we must assume that the legislature did not enact a useless provision. *See, e.g.*, *Hannis v. Deuth*, 816 N.E.2d 872, 876 (Ind. Ct. App. 2004). This is also consistent with the Commission's long history of granting CPCNs to water utilities. *See, e.g.*, *Gem Water, Inc.*, Cause No. 40922 (Jan. 21, 1998); *Boone County Utilities, L.L.C.*, Cause No. 40341 (Dec. 6, 1996); *Indianapolis Water Company*, Cause No. 39909 (June 8, 1994); *Liberty Water Corp.*, Cause No. 39720 (March 9, 1994); *Apple Valley Utilities, Inc.*, Cause No. 36283 (Aug. 26, 1981); *Harbour Water Company, Inc.*, Cause No. 35305 (June 21, 1978); *Shorewood Forest Utilities, Inc.*, Cause No. 33782 (Jan. 15, 1975). Thus, we find that we do have the authority to grant a CPCN to Granger in this matter. The Commission may also

[1] *Town of Lizton*, Cause No. 45274 (Nov. 27, 2019) ("*Lizton*").
[2] *See Lizton* at 6; Ind. Code § 8-1-30.3-6(5), (6).

reassess and revoke a CPCN previously granted to a water utility. *See, e.g.*, *Philadelphia Water Works*, Cause No. 44488 (March 18, 2015).

Petitioner must establish that the public convenience and necessity will be served through the issuance of a CPCN. The Commission must also consider the managerial, financial, and technical capabilities of Granger to provide the proposed water utility service.

The evidence of record reflects that there is a need for water service in Granger's proposed service territory, where a new subdivision that may ultimately have up to 600 homes is being developed. The evidence of record supports a finding that Granger has the financial ability to run its proposed utility, as Granger's financial models have been reviewed, vetted, and underwritten by large and sophisticated stakeholders, including its lenders and a certified public accountant. The evidence of record demonstrates that Granger hired experienced contractors to design and run its system, supporting a finding that Granger has the technical and managerial ability to run its system. Thus, we find that Granger has the financial, technical, and managerial abilities to run its proposed water utility and find that the public convenience and necessity will be served through the issuance of a CPCN to Granger.

However, as discussed further herein, we do not believe that Granger sufficiently explored alternate options to starting a new water utility. Even though we grant a CPCN to Granger to provide water service in its proposed service territory, we will continue to review whether a CPCN continues to be warranted after Granger has completed the life cycle cost analysis described below or whether other options are more appropriate.

Because Granger did not prepare the life-cycle cost analysis that was required by IDEM's WSMP process and we find that the cost analysis which was prepared by Mr. Matthews does not support a determination that Granger's proposed rates are just and reasonable, Granger is ordered to engage an independent, third-party professional engineer at its own cost to develop a life cycle cost analysis and conduct a full analysis of potential options for providing service, including, but not necessarily limited to, comparing the continued use of its already-constructed supply and treatment facilities to the potential option of connecting to Mishawaka's water system or other nearby water systems. The Director of the Commission's Water/Wastewater Division ("Director") must approve, in writing, Granger's proposed professional engineer (or consulting engineer) and scope of work before Granger may issue a notice to proceed to the professional engineer. The Director shall take care to ensure that the third-party engineer is indeed an independent, third party to this proceeding and will ensure that the scope of work will result in a proper life-cycle cost analysis of the various alternatives considered and ultimately selected. After the life cycle cost analysis is complete, which should occur no later than 12 months after the date of this final order, Granger shall file a request to open a subdocket under this cause number in which the Commission will determine, among other things, whether Petitioner's CPCN should be amended or revoked, what is the best method for serving Granger's customers, and, based on that determination, whether Granger's treatment plant loan may be included in its rate base.

C. Initial Rates and Charges.

i. Monthly Rates and Charges. Petitioner proposes a monthly flat rate of $75 for water service. According to Ms. Wilson, Petitioner's proposed monthly rates and charges initially would not be sufficient to enable Petitioner to pay all reasonable and necessary expenses of operation. The OUCC also noted that the $75 per month flat fee rate is less than the full cost of service.

Mr. Matthews testified that he understands the monthly fee "might seem a little high[,]" but noted that the customers are "voluntarily agreeing to move into The Hills and pay the $75.00 monthly rate." Petitioner's Exhibit 1 at 14. The evidence reflects that Granger will incur losses as a new start-up utility, and applying a cost-based approach would be cost prohibitive to its customers. The $75 amount for the flat fee is only a small percentage of the actual cost of service, which is being subsidized by the Developer.

Regarding meters, Mr. Matthews testified that Granger would prefer to not install meters until some undefined future date because "meters are expensive." Petitioner's Exhibit 1 at 15. Mr. Parks recommended that Granger install meters for all customers and opined that, "as noted by the [Commission], flat rates are a thing of the past." Public's Exhibit 3 at 28. While we do not necessarily agree that all flat rates are obsolete, we agree with the OUCC on the issue of meter installation in this specific situation. While the initial phase of development in The Hills will only produce 40 customers, Mr. Matthews testified that subsequent phases could result in up to 229 customers, and future expansion could result in up to 600 customers for Granger. Owners of new homes in an organized subdivision can reasonably expect to be watering their lawns fairly frequently during warm weather. In addition, expansion of the system will require significant improvements that will likely not be covered by the SDCs collected as discussed below. We believe that these factors make it crucial that this utility have the ability to send the proper price signals to customers to recover costs from those who drive those costs, and the only way to accomplish this is to have connections installed with meters. In addition, the cost of a new meter is typically included in the cost of the utility's tap fee. In the case of new construction, the builder typically pays the tap fee, then passes that cost along to the purchaser in the cost of the home, mitigating Granger's concern about meters being "expensive." The utility's only real cost of installing meters at this time would be the cost to retrofit the small number of existing homes and the cost of having the meters read.

After considering the evidence of record, we find that Petitioner's proposed initial $75 per month flat rate to be reasonable and authorize Petitioner to charge this flat rate on an interim basis. When Granger files its request to open a subdocket as discussed herein, it shall propose a volumetric rate structure. As Granger has not requested Commission approval of a tap fee in this proceeding, we order Granger to file a request for approval of a tap fee through the Commission's 30-day filing process within 60 days of the date of this final order. We also order Petitioner to install meters for all customers. For homes already connected to the system, Granger shall install meter pits and meters at its own cost.

ii. System Development Charge. Petitioner selected the incremental cost method for calculating SDCs because the AWWA Manual M1 provides it is typically used for systems that have no or limited capacity or new or incremental facilities are needed to serve additional customers. Using the incremental cost method, Petitioner demonstrated it could charge up to nearly $7,200 per EDU. Petitioner indicated that level of SDC might stymie growth and reduced the proposed SDC to $1,750. In its case-in-chief, Petitioner requested approval, to the extent the Commission requires approval, of the use of SDCs to pay for operating expenses. On rebuttal, Granger requested that it be authorized to use SDCs to reimburse itself for the capital outlays required to build the water treatment plant. Petitioner notes that the Commission approved the use of SDCs for reimbursement in Cause No. 43435, and if its request is granted, this would eliminate a taxable event and the issue of using SDCs to pay operating expenses.

Ms. Sullivan testified that Petitioner should not be permitted to gross-up SDCs for income taxes, noting that Granger will not generate taxable income for at least 19 years. She stated that income tax on SDCs is a timing difference reflected in deferred taxes, noting that the utility pays income tax in the year of receipt, which increases the depreciable tax basis. For book purposes, CIAC is not reflected in income for income tax expense, and the amortization of CIAC is reflected as an offset to regulatory depreciation expense. Ms. Sullivan also noted that the Infrastructure Bill would amend the IRS code to eliminate the taxation of SDCs.

The SDC calculation presented represents a per-EDU amount well beyond Petitioner's request. Use of SDC proceeds for reimbursement of prior capital expenditures will help to ensure all customers will contribute an equal amount to fund the utility plant which has been pre-funded by the shareholders. We find that the evidence of record supports Petitioner's request to charge a $1,750 SDC, and we approve Petitioner charging $1,750 as its SDC with the entire amount received recorded as CIAC. With respect to Granger's request to gross up its SDCs for income taxes, the Infrastructure Bill amending the IRS code to eliminate the taxation of SDCs is currently in effect, making this request moot.

iii. Service Call Charge. Petitioner initially proposed service call charges of $235 per call during business hours and $555 per call after business hours and on holidays. In her direct testimony, Ms. Wilson testified that the service call charge (for non-emergencies or calls during business hours) is the estimated cost for providing one hour of service at an estimated hourly rate of $135 from the service contractor plus $100 for overhead and billing expenses incurred by Granger. The service call charge for emergencies or calls outside business hours was apparently calculated in a similar manner, with an estimated hourly rate of $405 from the service contractor plus $150 for overhead and billing expenses incurred by Granger.

Both Mr. Parks and Ms. Sullivan testified that the proposed service call charges are exorbitant and unsupported and recommended the Commission deny Petitioner's request to implement these charges. Mr. Parks noted that the OUCC opposes the charges because they do not align with ordinary and customary charges of water utilities and Petitioner has not provided adequate support showing the charges are cost based. Mr. Parks provided a table showing Granger's proposed service call charges are significantly higher than the corresponding charges of area utilities.

On rebuttal, Ms. Wilson testified that Granger was willing to reduce its service call charges to $160 for calls during business hours and $430 for after-hours calls.

We agree with the OUCC that Petitioner has not adequately supported its proposed service call charges. The cost support shown in Public's Exhibit 1, Attachment CFS-17, provides no breakdown of what is included in the contractor's hourly overhead rate. We find that both Granger's proposed $100 "overhead" component and the RB Trucking and Towing rates are exorbitant and out of line with other utilities under the Commission's jurisdiction. In addition, we are concerned that Granger agreed to reduce the fees to $160 and $430 on rebuttal without explanation or support, suggesting that they are not cost based. Even if they are cost based, however, the fees must also be reasonable and prudent, and we find that these proposed fees are not. A utility cannot simply go to one vendor and ask what that vendor would charge to perform the service call. The costs are much higher than the costs incurred by other utilities. The utility needs to contact multiple vendors or provide the service in house to assess a more reasonable charge.

For these reasons, we deny without prejudice Granger's request to implement the service call charges it proposed on rebuttal. Granger can seek approval of a well-supported service call charge through the Commission's 30-day filing process.

iv. Bad Check Charge. According to Public's Exhibit 1, Attachment CFS-16, Petitioner's initial proposal was to charge $135 for bad checks, including $35[3] for a bank charge and $100 for "overhead and billing." Like the service call charges discussed above, Ms. Sullivan concluded that the bad check charge is exorbitant and recommended the Commission deny Granger's request to implement such a charge. On rebuttal, Ms. Wilson indicated that Granger is willing to reduce the bad check charge to $57.

As with the service call charges, we find that Granger has not adequately supported its proposed bad check charge, even at the reduced amount of $57. While the $32 fee from TCU is supported, the $100 overhead component remains unsupported and is exorbitant and out of line with other utilities under the Commission's jurisdiction. Like the service call charge, we are also concerned that Granger agreed to reduce the fee to $57 on rebuttal without explanation or support, suggesting that the charge is not cost based.

Thus, we approve a bad check charge of $32. Should Granger wish to charge more than this amount, it can seek approval of a well-supported bad check charge of more than $32 through the Commission's 30-day filing process.

v. Late Payment Charge. Ms. Wilson opined that Granger's proposed late payment charge of 10% on the first three dollars and 3% on amounts in excess of three dollars is typical of the charge allowed for water utilities. The OUCC did not oppose Granger's proposed late payment charges. Based on the evidence of record, we find that Granger's proposed late payment charges are reasonable and are therefore approved.

[3] An email from TCU included in Attachment CFS-16 indicates TCU's bad check charge is $32, not $35.

D. Customer Notice. Petitioner proposed providing each customer or prospective customer with a notice informing recipients that Petitioner's proposed $75 rate would not recover the cost of providing service or provide a return on its investment. Petitioner modeled its notice after a form of notice approved in Cause No. 42011. The OUCC criticized Petitioner's form of notice because the notice does not identify how high rates could possibly go. We find that Petitioner voluntarily notifying customers and potential customers of this issue when no requirement exists and using a form previously approved by the Commission pursuant to an agreement with the OUCC is reasonable and therefore approved.

E. Applicability of Alternative Regulatory Procedure. In order to qualify for an ARP, a water or wastewater utility must meet the following requirements: (a) the utility serves fewer than 5,000 customers; (b) the utility primarily provides retail service to residential customers; (c) the utility does not serve extensively another utility; (d) the utility's current rates were set by a general rate order issued after January 1, 2011; (e) before each annual increase, the utility has met all mandatory program elements as described herein; (f) before each annual increase, the utility has met the requisite number of elective program elements as described herein; and (g) before each annual increase, the utility has made the filings as required by this program and received Commission approval.[4]

Ms. Wilson testified that Granger plans to increase rates according to the ARP for small utilities for five successive years following approval of its initial rates, even though Granger is not seeking approval of an ARP in this Cause. She stated that Granger anticipates that customer growth will close the gap between revenues generated from customers and Granger's revenue requirement.

Ms. Sullivan disagreed that an ARP should be included in the initial approval of a new water utility, since ARP should be authorized at the conclusion of a general rate case and relies upon an established test year. She noted that the OUCC does not believe it is appropriate for a utility to count on ARP to establish its financial viability. The specific goal of ARP is to increase the rates by increasing the revenue requirement for operating and maintenance expenses. According to Ms. Sullivan, since Granger's rates are not cost based, an ARP is not possible.

On rebuttal, Ms. Wilson testified that Granger did not request pre-approval of future rate increases using ARP in this Cause and disputed the OUCC's argument that Granger is not eligible for ARP because this is not a general rate case.

After considering the evidence of record, we find that Granger's proposed use of the ARP does not serve the ARP's intended purpose to increase a utility's financial, managerial, and technical capabilities. Instead, Granger seeks to use the ARP to justify increasing rates in the future to be more cost based, which we find is an inappropriate use of the ARP. In the Commission's Final Order in Cause No. 44203 (Oct. 9, 2018), we noted that the ARP program was established "to encourage and increase a utility's financial, managerial, and technical capacities through participation in certain approved mandatory and elective programs." *Id.* at 4. Thus, we find that Granger does not qualify for an ARP program at this time, and, thus, ARP-based rate increases should not be included in Granger's financial projections.

[4] The requirements for an ARP are available on the Commission's web site at https://www.in.gov/iurc/files/ARP-Program-as-Settled-Final-Revised-2-2-21.pdf.

F. Long-Term Debt and Encumbrance of Franchise, Works, or System.

i. Treatment Plant Loan. The evidence of record indicates that Petitioner has already issued long-term debt and encumbered its franchise, works, or system through a mortgage. It did so without seeking Commission approval and has offered a host of excuses for why this happened. Notably, Mr. Matthews claimed that the COVID-19 pandemic and remote work hampered his attempts to communicate with the Commission, despite the fact that the Commission and its employees continued to work full time during the pandemic and had access to all forms of communication previously used, including phone and email.

The evidence of record indicates that Granger was notified several times of the necessity of seeking Commission approval before beginning to operate as a water utility. On October 22, 2020, in IDEM's Certification of Demonstration of Capacity for a New Public Water Supply, IDEM specifically made its approval of the WSMP contingent, stating, among other things, that Granger's "demonstration of capacity is approved, but their ability to be activated as a community public water supply is still contingent upon them obtaining rate approval from the [Commission]." Public's Exhibit 3, Attachment JTP-1.

We also note that, on August 17, 2020, Dana Lynn, Chief Technical Advisor in the Commission's Water and Wastewater Division, sent an email to Mr. Matthews stating, among other things, that "[a]s a startup water utility, Granger Water would need to retain an attorney and file a Petition with the Commission requesting approval of initial rates and charges, as well as for financing approval, if necessary." *See* Public's Exhibit 2, Attachment SD-1. Further, in the Financial Capacity Checklist dated October 14, 2020, Ms. Lynn noted that "Indiana Code § 8-1-2-78 requires financing authority be obtained from the IURC before a utility may incur debt." *See* Public's Exhibit 2, Attachment SD-2, at 7. Together, these communications indicate that Petitioner knew but chose to disregard the requirement of securing Commission approval before entering into long-term debt and encumbering utility assets.

Mr. Matthews testified that Granger obtained a loan for $1,481,397 at an interest rate of 4.25% with a term of three years from Teachers Credit Union on March 19, 2021 to construct the water treatment plant. Ms. Wilson testified that the loan will be repaid through equity contributions from the owners and available funds from Granger. Mr. Dellinger expressed concern over the short term of the loan and opined that a longer term would have been more prudent. On rebuttal, Ms. Wilson noted that the term of the loan might be extended beyond March 31, 2024.

As noted above, because we find that Petitioner failed to adequately investigate alternative options other than building its own treatment plant, we decline to formally approve the $1,481,397 loan at this time.[5] This denial is without prejudice to reconsidering this matter after the life cycle cost analysis discussed above is completed.

ii. Distribution System Loan. Mr. Matthews testified that Granger requests authority to enter into loan agreements for the water distribution system from its affiliate

[5] Because we decline to approve the $1,481,397 loan at this time, we need not reach the issue of the cross-collateralization agreement in this loan, to which the OUCC also objected.

The Village Development, LLC for $370,000. The loan will be repaid through equity contributions. Mr. Matthews indicated Granger wanted to protect customers from the tax liability created by the federal Tax Cuts and Jobs Act, which made CIAC taxable.

Both Mr. Dellinger and Ms. Sullivan testified about reasons the OUCC opposes this request by Granger. Mr. Dellinger noted that, instead of the developer building and then contributing the distribution system to the utility in exchange for service, which is typical, Granger's plan is to buy the distribution system from its affiliate. Ms. Sullivan stated that, if Commission approves the formation of Granger, it should be required to follow the main extension rules as set forth in 170 IAC 6-1.5-33 regardless of negative tax consequences.

On rebuttal, Ms. Wilson opined that 170 IAC 6-1.5 does not prohibit Granger from purchasing the distribution assets from its affiliate. She stated that allowing Granger to purchase distribution system assets instead of receiving them as a contribution enables Granger to incur less tax liability under the current tax law that would only add to operating losses. Ms. Wilson and Mr. Matthews both testified that Granger will not include distribution system assets in calculating its rate base and will therefore have no effect on customer rates. Mr. Matthews noted that the distribution system loan was designed to minimize tax liability. He further testified that if legislation passes with the CIAC language, the Developer will contribute the distribution system, making that issue moot.

After considering the evidence of record, we decline to approve Granger's proposed distribution system loan, as the distribution system will be contributed to Granger and not included in rate base since the IRS code was changed to eliminate tax on contributions.

G. Capital Structure. Petitioner's capital structure is not a primary issue in this proceeding because Petitioner proposes to recover less than it is entitled to recover in rates for purposes of getting its operations running and building a customer base. None of our findings in this Order shall be cited in support of any argument regarding what Petitioner's capital structure should be in future cases.

H. Deferred Accounting Treatment. Petitioner requested authority for deferred accounting treatment for the purposes of collecting operating losses as a regulatory asset to be presented in a future rate proceeding. Petitioner's witnesses have noted that it is not seeking guaranteed recovery of the regulatory asset, but rather is merely seeking the opportunity to present the regulatory asset for recovery.

When we have previously considered requests to create a regulatory asset, we discussed the need to consider the balance struck between the utility and the ratepayers if we approve such a request. Here, we would be creating a pathway for Petitioner to set artificially low rates, thereby creating operating losses, with an eye toward recovering those losses in the future. The regulatory process should not be used to back in to higher rates under these circumstances. We agree with the OUCC that deferred accounting is an extraordinary treatment that should be used sparingly by the Commission in response to extraordinary events and not as a basic feature in a business plan.

> [I]t is necessary to consider the balance struck between the utility and its ratepayers by approving such a request. For example, the gravity of the financial event involved and its impact on the utility is appropriate to consider, as well as the impact such accounting and/or ratemaking treatment will have upon the utility's ratepayers. Further, it is necessary for the utility request requesting such extraordinary treatment to be able to demonstrate with convincing evidence that the financial event is in fact occurring, and that such financial impact is fixed, known, and measurable. If all of these elements are established, a utility might receive approval for such an extraordinary request.

Ind. Mich. Power Co., Cause No. 40980 at 7 (Nov. 12, 1998); *see also, Duke Energy Ind., Inc.*, Cause No. 43743 (Oct. 19, 2011).

Thus, based on the evidence of record, we decline Granger's request for deferred accounting treatment.

I. Consent for Use of County Property. Petitioner requested that the Commission consent to the use of county property pursuant to Ind. Code § 36-2-2-23. The Commission commonly consents to the use of county property in furtherance of providing utility service. No evidence was presented to counter Petitioner's request. Accordingly, the Commission consents to Petitioner's use of county property.

8. The OUCC's Appeal to the Full Commission. During the November 15, 2021 hearing, the OUCC objected to Petitioner's counsel questioning Mr. Matthews on redirect about certain pages of OUCC CX-4. The OUCC objected to redirect on these portions of its CX-4 as outside the scope of cross examination and therefore outside the permissible scope of redirect. The Presiding Administrative Law Judge overruled the OUCC's objection and permitted redirect on the pages objected to by the OUCC, but also stated that the OUCC could conduct additional cross examination on the objectionable pages, which the OUCC declined to do. The OUCC sought an appeal to the full Commission of the Presiding Administrative Law Judge's ruling, which was taken under advisement.

After considering the evidence of record, we affirm the Presiding Administrative Law Judge's ruling on this matter. The OUCC opened the door to questioning about the entirety of OUCC CX-4, all of which related to communications between Granger and Mishawaka, by requesting it be entered into the record. "The presiding officer has necessary authority to control the receipt and admissibility of evidence[.]" 170 IAC 1-1.1-21. We find that the Presiding Administrative Law Judge was well within her discretion to overrule the OUCC's objection on this matter and allow redirect on the OUCC's cross-examination exhibit. We agree that the OUCC opened the door to examination on the entire exhibit by seeking its admission. In addition, the OUCC declined the Presiding Administrative Law Judge's offer to conduct additional cross examination on the purportedly objectionable redirect, so it is unclear what harm could have possibly occurred from allowing redirect on OUCC CX-4.

9. Confidentiality. On June 22, 2021, Granger filed a Motion for Protection and Nondisclosure of Confidential Information ("Motion"), which was supported by the affidavit of

Mr. Matthews, 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 Granger. The Presiding Officers issued a Docket Entry on July 6, 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 granted a certificate of public convenience and necessity to provide water service in the proposed service territory described in its evidence. The status of this CPCN will be reassessed after Petitioner has completed the life cycle cost analysis pursuant to Ordering Paragraph 9 and described further herein.

2. Petitioner is authorized to charge an initial $75 per month flat rate for water service on an interim basis. When the subdocket to this Cause is filed, Petitioner shall include its proposed volumetric rate structure in that filing.

3. Petitioner shall install meters for all of its customers.

4. Granger shall file for approval of a tap fee through the Commission's 30-day filing process within 60 days of the date of this final order.

5. Petitioner is authorized to charge a system development charge of $1,750 to be recorded as CIAC.

6. Petitioner is authorized to implement a bad check charge of $32 and may seek authorization for an increased amount of a bad check charge through the 30-day filing process.

7. Petitioner's request to implement the service call charges discussed herein is denied without prejudice. Petitioner may seek authorization for well-supported service call charges through the 30-day filing process.

8. Petitioner's request to implement the late payment charges discussed herein is approved.

9. Petitioner shall undertake an independent life cycle cost analysis as specified herein and shall file the results of that life cycle cost analysis under a subdocket in this Cause.

10. Petitioner's request for approval of its treatment plant loan is denied without prejudice.

11. Petitioner's request for approval of its distribution system loan is denied, as the distribution system will be contributed to Granger and not included in rate base.

12. Petitioner's request for deferred accounting treatment for purposes of collecting operating losses as a regulatory asset to be presented in a future rate proceeding is denied.

13. The Commission provides consent, pursuant to Ind. Code § 36-2-2-23, for the Board of Commissioners of St. Joseph County, Indiana to grant Petitioner a license, permit or franchise authorizing its use of roads, highways, and other property of St. Joseph County, Indiana for water utility purposes.

14. The Presiding Administrative Law Judge's ruling discussed in Paragraph 8 is affirmed.

15. The information submitted under seal in this Cause pursuant to Petitioner's Motion is determined to be confidential trade secret information pursuant to Ind. Code §§ 5-14-3-4 and 24-2-3-2 and shall continue to be held as confidential and exempt from public access and disclosure pursuant to Ind. Code §§ 5-14-3-4 and 8-1-2-29.

16. This Order shall become effective on and after the date of its approval.

HUSTON, FREEMAN, AND KREVDA CONCUR; OBER DISSENTS; ZIEGNER ABSENT:

APPROVED: APR 13 2022

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

Dana Kosco

Digitally signed by Dana Kosco
Date: 2022.04.13 10:31:12 -04'00'

Dana Kosco
Secretary of the Commission

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF GRANGER WATER UTILITY LLC FOR (1) APPROVAL OF AN INITIAL SCHEDULE OF RATES AND CHARGES FOR WATER UTILITY SERVICE; (2) FOR APPROVAL OF LONG TERM DEBT, INCLUDING AN ENCUMBRANCE OF ITS FRANCHISE, WORKS OR SYSTEM RELATED THERETO; (3) FOR ISSUANCE OF A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE WATER UTILITY SERVICE IN CERTAIN AREAS OF ST. JOSEPH COUNTY, INDIANA; (4) FOR CERTAIN DEFERRED ACCOUNTING TREATMENT; AND (5) FOR CONSENT OF THE COMMISSION TO OBTAIN A LICENSE, PERMIT OR FRANCHISE TO USE COUNTY PROPERTY PURSUANT TO IND. CODE § 36-2-2-23	)	**CAUSE NO. 45568** **APPROVED: APR 13 2022**

DISSENTING OPINION OF
COMMISSIONER DAVID L. OBER

I respectfully dissent from the majority opinion because, as the majority rightly observes, the requests made by Granger are at odds with the policies of the state. I am unconvinced by the evidence of record that Granger possesses the requisite technical, financial, and managerial capacity necessary for the provision of safe and reliable utility service at just and reasonable rates.

I am likewise concerned by Granger's admitted ignorance[6] of state law and the Commission's policies and procedures. Granger has incurred significant debt without seeking pre-approval by the Commission, and the majority has rightly deferred final approval of the incurred debt pending further review. Similarly, Granger ignored notifications indicating that Commission review and approval was necessary before utility operations may commence.

Granger has proposed in this cause to implement rates and charges that are insufficient to support utility operations and seeks deferred accounting treatment for the resulting operating losses. Further, the utility proposes to notify existing and prospective customers that their requested rates are insufficient to recover their cost of service. I am pleased that the majority disallowed the accounting treatment that Granger proposed as it would have led to intergenerational inequity as the utility's future customers would bear a materially higher burden due to contemporary decisions made by Granger.

An additional issue that necessitates review and consideration from the Indiana General Assembly is the need for enhanced coordination between permitting authorities and more stringent

[6] Petitioner's Exhibit 3 at 3.

requirements related to the various regulatory approvals needed to begin providing utility service to customers. The policy of the state is cost efficiency and scale in the provision of water and wastewater service. Increased agency collaboration and more direction from the General Assembly regarding the factors that must be considered before approving a startup water or wastewater utility. A balance must be struck between meeting the needs of unserved areas of the state and encouraging the development of startup utilities. The barriers to entry are perhaps too low.

The majority has expressed a feeling of obligation given that this utility has initiated utility service to a small number of customers. My dissent in this matter should not be construed as indifference towards the customers that are currently receiving service from Granger. Truthfully, those customers are confronted with potentially negative outcomes regardless of the decisions rendered in this order. Granger has shown disregard for the people and institutions responsible for safeguarding the public and the utility is responsible for rebuilding that trust.

Granger has naively stumbled through the process of beginning a startup utility, and, while the majority may feel a sense of obligation to allow them to continue given the potential negative outcomes that may result from an outright denial, I am concerned about how this decision will be perceived by others contemplating similar ventures. A bias towards seeking forgiveness rather than permission cannot be tolerated. Prospectively, I expect that Granger and its agents will utilize the regulatory proceedings anticipated by this order to demonstrate how they plan to overcome these challenges.

It is primarily for these reasons, among others, that I would deny the relief requested by Granger and, therefore, respectfully dissent from the majority opinion.