

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) CAUSE NO. 45568
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)

OUCC'S PROPOSED ORDER

The Office of Utility Consumer Counselor ("OUCC"), by counsel, hereby submits its proposed order.

Respectfully submitted,

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR



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ORDER OF THE COMMISSION

Presiding Officers:

Stefanie Krevda, Commissioner

Jennifer Schuster, Administrative Law Judge

On June 22, 2021, Granger Water Utility LLC ("Granger Water" or "Petitioner") filed with the Indiana Utility Regulatory Commission ("Commission") its Petition seeking approval of an initial schedule of rates and charges for water utility service, approval of certain long term debt, issuance of a certificate of public convenience and necessity to provide water service in certain areas of St. Joseph County, Indiana, approval of deferred accounting treatment for operating losses, 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. Petitioner pre-filed its testimony and exhibits constituting its case-in-chief on June 22, 2021. On July 26, 201, Petitioner filed a Stipulation and Agreement in Lieu of Prehearing Conference on July 26, 2021 entered into by Petitioner and the Indiana Office of the Utility Consumer Counselor (the "OUCC") proposing a procedural schedule and other related matters. On July 28, 2021, the Commission issued its Docket Entry establishing the procedural schedule in this matter.

On September 28, 2021, the OUCC filed testimony in response to Petitioner's case in chief. On October 26, 2021, Petitioner filed its rebuttal testimony.

Pursuant to notice given as provided by law, an evidentiary hearing was held in this matter on November 15, 2021, at 9:30 a.m. in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. At that 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 and being duly advised in the premises, the Commission now finds that:

1. Notice and Jurisdiction. Notice of the time and place of the hearings 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. Petitioner is subject to Commission jurisdiction as prescribed by Ind. Code § 8-1-2 and § 8-1.5-2-19 and § 8-1.5-3-8. The Commission has jurisdiction over Petitioner and the subject matter of this Cause.

2. Petitioner's Characteristics. Petitioner is a for-profit water utility which proposes to own and operate a private water system in Granger, an unincorporated, high demand community located in the northeast corner of St. Joseph County, Indiana. The water utility system includes wells, treatment and storage facilities, water main extensions, and service lines.

3. Requested Relief. Petitioner's case in chief sought approval of initial rates and charges, approval of long-term debt, and an encumbrance of Petitioner's franchise, works or system, a certificate of public convenience and necessity to provide water utility service in St. Joseph County, Indiana, consent pursuant to I.C. § 36-2-2-23 of the Commission to the Board of Commissioners of St. Joseph County, Indiana granting Granger Water a license, permit or franchise authorizing its use of roads, highways, and other property of St. Joseph County, Indiana for water utility purposes. Granger Water also requested approval of a system development charge and approval of certain regulatory treatment of the system development charge proceeds. Granger Water requested approved deferred accounting treatment for its prospective operating losses.

4. Petitioner's Case-in-Chief. Petitioner's case-in-chief included testimony from J. Patrick Matthews and Jennifer Z. Wilson. J. Patrick Matthews, the Chief Executive Officer and member of Granger Water Utility LLC, provided testimony describing the proposed development in Granger Water's service area and other details and information regarding Granger Water's proposed water utility services.

A. Direct Testimony of J. Patrick Matthews. Mr. Matthews state the purpose of his testimony is to describe the proposed development in Granger Water's proposed service area and provide other details and information regarding Granger Water's proposed water utility services. Additionally, Mr. Matthews testified he would demonstrate that the public convenience and necessity will be served by authorizing Granger Water to operate through a certificate of public convenience and necessity. Mr. Matthews also testified that the Commission should consent to the use of county property by Granger Water in accordance with Ind. Code § 36-2-2-23, and that Granger Water's request for the establishment of an initial schedule of rates and charges should be approved.

Mr. Matthews described Granger Water as a for-profit water utility which proposes to own and operate a private water system in a high demand bedroom community area in St. Joseph County, Indiana, which will include wells, treatment and storage facilities, water main extensions, and service lines.

Mr. Matthews testified that Granger Water's proposed service area is comprised of approximately 151 acres located in St. Joseph County, Indiana, which he described as essentially a development known as The Hills at St. Joe Farm ("The Hills"). Mr. Matthews added that while the Service Area is the proposed initial service area for which a certificate of public convenience and necessity is requested, Granger Water plans to expand its service area over time, including potentially extending water service to presently unserved developments in the unincorporated area known as Granger, Indiana, located in St. Joseph County.

Mr. Matthews testified the Hills will encompass approximately 76 acres and will initially include 40 units, but the entire 76-acre project will consist of 229 homesites. Village Development LLC, the developer of The Hills ("Developer") has an option on an adjacent 75 acres that would allow for expansion of the project to 500-600 homes. Currently, the surrounding area is served by wells and septic systems, which St. Joseph County has expressed are not a sustainable solution and believe that Granger Water may be a longer-term solution to providing water utility service to nearby developments currently served by individual wells. Granger Water is not seeking that yet, however, as Granger Water needs to get up and running first by serving The Hills before it can consider extensions to existing neighborhoods.

Mr. Matthews testified that all permits and approvals have been received from The St. Joseph County Plan Commission.

Mr. Matthews testified that all of the municipalities and water systems located within ten (10) miles of the proposed service area have been notified of the water supply system to be developed by Granger Water pursuant to the Indiana Department of Environmental Management's ("IDEM") capacity development program, and all have indicated they are not interested in assisting with the facilities potable water supply or have failed to respond. Mr. Matthews testified that the costs of main extensions from these other systems were excessive, ultimately making an extension infeasible. Creating a new water utility was the most cost-effective solution for providing water to The Hills subdivision.

Mr. Matthews testified that St. Joseph County and the St. Joseph County Regional Water and Sewer District support Granger Water providing water utility service. Letters of support from the St. Joseph County Commissioners, the St. Joseph County Council, the St. Joseph County Department of Infrastructure, Planning & Growth, and the St. Joseph County Regional Water & Sewer District ("SJCRWSD") were attached to Mr. Matthews' testimony as Exhibit 1, Attachments JPM-7 and JPM-8.

Mr. Matthews testified that water service is necessary for public convenience in this area, will add to the value of residential properties, help maintain home values, attract prospective residents to the area, increase the safety of potable drinking water, obviate the necessity of creating hundreds of new private wells and septic systems. Additionally, the proposed water utility will aid

the County's economic development, will provide increased fire protection ability for the proposed service area and reduce insurance costs for the new residents.

Mr. Matthews then discussed Granger Water's plans for providing water service. Mr. Matthews testified that Granger Water plans to serve up to 600 service connections within The Hills development. He stated that Granger Water will not connect to a separate private water system or municipal system, as there is no system located within a reasonable distance to make a connection feasible. Mr. Matthews testified that Granger Water owns the land on which the 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 Water. Mr. Matthews testified that IDEM approved both the WSMP and the Application for Construction Permit for Public Water System.

Mr. Matthews testified that the Granger Water system will be served by two 12-inch diameter wells equipped with vertical turbine pumps and motors. These will feed into one common treatment plant for iron and manganese removal. The treatment plant will also house two (2) hydropneumatic water storage tanks measuring approximately 60" in diameter by 267" end to end. There will be no secondary pumping into the system, pressure will be developed by the well pumps themselves, and held constant by the hydropneumatic water storage tanks. All pumping, treatment, and storage facilities will be powered by three-phase electrical service with a 60 kW natural gas three-phase 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, who 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 testified that the water will not need to be treated for nitrates but will be filtered for naturally occurring iron and manganese, which will result in some of the highest quality water in the vicinity.

Mr. Matthews testified that Granger Water has hired high quality consultants and contractors, including Peerless Midwest, Inc., as its water supply consultant and Astbury Water Technology as its state certified operator, to ensure that the highest level of service is provided to customers at a reasonable cost.

Mr. Matthews testified that Granger Water has the necessary financial resources to operate the water utility. The principals of Granger Water will be infusing approximately \$530,000.00 of equity into the utility for land purchase, construction, and initial operating costs, with the remainder of the anticipated costs provided by debt financing.

Mr. Matthews testified that Granger Water proposes to charge an initial monthly flat rate of \$75.00. Granger Water proposes to use the Commission's small utility alternative regulatory

procedure to increase rates and charges on a periodic basis by the Commission-approved factor. There will also be a \$1,750.00 system development charge (“SDC”) and other nonrecurring charges commonly charged by water utilities.

Mr. Matthews testified that this flat rate of \$75.00 is reasonable for multiple reasons. First, customers are voluntarily choosing to move into The Hills and paying the \$75.00 monthly rate. They are choosing to move to The Hills and have factored the \$75.00 monthly rate into their cost considerations. Granger Water has an incentive to not charge too high of a rate because that would stymie lot sales and slow customer growth. Second, many municipal utilities would charge significantly higher residential rates than what they actually charge, which makes the proposed \$75.00 seem artificially high. Finally, 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. The lower sewer charge is available because the sewer system is being contributed to SJCRWSD. Mr. Matthews asserted that the combined water and sewer bill of approximately \$150 per month is very reasonable and attractive to home buyers.

Mr. Matthews testified that Granger Water proposes a flat rate as the customer base will be homogenous and therefore usage is estimated to be very similar between customers, and expensive meters would result in a higher fixed fee portion of each water bill. Granger Water will likely install meters sometime between years 6 and 10 of operation. Mr. Matthews testified that Granger Water is presently notifying prospective homeowners that rates may increase in the future.

Mr. Matthews also added that Granger Water has received a tax abatement for both real and personal property from St. Joseph County, which will help considerably with cash flows. He stated that right when customer counts start rising and operating revenues increase, the tax abatement rolls off, which matches up well with Granger Water’s financial plan.

Mr. Matthews testified that Granger Water obtained a loan in an amount not to exceed \$1,481,397 for purposes of constructing the water treatment plan. Mr. Matthews testified that, with interest rates as low as they are, debt is a reasonable financing mechanism. Mr. Matthews testified that the financed project is a prudent and reasonable use of funds, as a water treatment plant is absolutely necessary to provide water utility service. In addition to Mr. Matthews personal guaranty, the lender required a mortgage on the property. The public interest will be served by this encumbrance on the property of Granger Water because it allowed for a lower interest rate on the debt, which in turn lowers the need for higher rates on customers.

Mr. Matthews testified regarding the long-term debt related to the water distribution system. He stated that Granger Water proposes to purchase the water distribution system at cost from the developer. Granger Water proposes a draw loan in an amount equal to the cost of the distribution system installed by the developer. The loan will be paid down by equity infusions. Mr. Matthews stated that this arrangement is reasonable because Granger Water is foregoing a return on the distribution system investment, interest expense is not charged to net operating income, and the loan arrangement reduces taxes that would otherwise be recoverable from customers by the utility. He further testified that Granger Water requests authority to enter into loan agreements on the same basic terms and conditions for future phases of The Hills, and that Granger Water would be willing to make a compliance filing related to this request.

Mr. Matthews testified that Granger Water proposes to serve homeowners moving into The Hills beginning in August 2021 for free until the Commission approves its rates and charges. He stated he was aware of one other instance where a water utility provided service for free until rates and charges were approved, which was in the Newport Chemical Depot Reuse Authority Cause No. 44699.

Mr. Matthews testified that Granger Water seeks approval to record operating losses in a manner that will allow it to seek a return of, and return on, losses in a future rate proceeding. Mr. Matthews testified that such accounting treatment is reasonable because Granger Water will not cover the costs of operating in the short term, and 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 Water is not requesting a guarantee of recovery and return on those costs but rather the opportunity to defer the costs for presentation in a future rate case.

Mr. Matthews testified that Granger Water, in addition to the loan discussed earlier, has one additional affiliate contract. Forest Beach Builders is an affiliate of Granger Water that Granger Water hired to construct the shell of the water treatment plant. Unaffiliated contractors are performing the bulk of the work on Granger Water's system. The value of the affiliate contract is \$300,000, which is minor, considering the more than \$2 million being expended to place Granger Water in a position to start utility service.

Mr. Matthews also testified that, pursuant to Ind. Code § 36-2-2-23, Petitioner requests the Commission for the Board of Commissioners of St. Joseph County, Indiana 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.

Mr. Matthews testified that, while there is risk in starting a new utility, he believes there are powerful factors that mitigate that risk. First, Granger Water has hired quality operators and consultants. Peerless Midwest and Astbury are top quality consultants that will ensure Granger Water does not run into operational problems. Further, demand is strong for homes in The Hills. There is significant pent up housing demand, and the first new subdivision served by water and sewer in over 20 years in unincorporated St. Joseph County, i.e., The Hills, is serving that demand. Based on the demand Granger Water has seen, customers will move in and the utility will grow.

Finally, Mr. Matthews testified that public convenience and necessity require that Granger Water provide water service in the proposed area. As previously stated, water service will have the effect of increasing public safety and environment in the proposed area, and the service can be provided on a reasonable and affordable basis.

B. Direct Testimony of Jennifer Z. Wilson. Jennifer Z. Wilson, a Consulting Managing Director with Crowe LLP, a certified public accounting and consulting firm, provided testimony regarding the estimated financial results of Granger Water based on its proposed rates and charges and various assumptions provided to Ms. Wilson by Granger Water. Ms. Wilson testified that she was engaged by Granger Water to develop revenue requirements for its annual

operations and calculate rates and charges. Details of these calculations are outlined in Ms. Wilson's Rate Report (the "Report"), attached to her testimony as Attachment JZW-1.

Ms. Wilson testified that, because Granger Water does not have historical financial information from which to calculate revenue requirements, the Report is based on data and assumptions provided by Granger Water based on its expectations of growth and future costs, input from consulting engineers, and input from contractors to be engaged for providing water service. Ms. Wilson testified that she believes the assumptions are reasonable. Ms. Wilson testified that the most significant assumptions are (a) that Granger Water will have 38 new customers per year from year one to year five, and 35 per year from year six to year ten, and (b) that the water plant assets initially constructed are sized to serve approximately 260 customers, and expansion of treatment capacity will require additional capital expenditures of \$500,000.

Ms. Wilson testified that the usual method of calculating a rate sufficient to recover a utility's revenue requirements does not work for Granger Water, who will have a low number of customers in the early years of development who will not be able to support Granger Water's revenue requirements without facing exorbitant rates. Granger Water proposes a flat rate charge of \$75.00 as an initial rate that balances the cash needs of Granger Water 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 does not seek approval for said increase in this cause. Granger Water anticipates that customer growth will close the gap between revenues generated from customers and Granger Water's revenue requirement.

Ms. Wilson testified that Granger Water will 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 pay for operating expenses, Granger Water requests such approval. Upon reaching a point of sustainable cash flows from operations, Granger Water will cease using SDCs to fund operating expenses and will reserve these funds for future capital improvements. Finally, Granger Water plans to make equity contributions to assist in the purchase of the distribution system of Granger Water and other shortfalls that may arise.

Ms. Wilson testified that, given the start-up nature of Granger Water and the residential development as a whole, Granger Water was required to invest in infrastructure to make Granger Water viable for future customers. In doing so, Granger Water relied on its owners' resources debt financing to fund initial build out of infrastructure. Ms. Wilson testified that Granger Water views SDCs not as a contribution for future capital expenditure, but rather a reimbursement for prior capital expenditures. 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 Water are effectively reimbursing the owners of Granger Water for making capacity available to them. This functions as a change in capital structure over time as Granger Water 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 Water to use to offset operating losses during infancy of Granger Water and the residential development.

Ms. Wilson testified that the SDC was 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”). While appropriate conceptually, this method results in nearly a \$7,200 charge, which is unreasonable. Given that Granger Water’s long-term success and stability will be achieved through customer growth, Granger Water proposes an initial charge of \$1,750, which, after taxes, results in a contribution of \$1,015 to Granger Water. This amount balances cash flow requirements and in Mr. Matthews opinion will not deter future customer growth.

Ms. Wilson testified that, though the SDC recorded as contribution in aid of construction (“CIAC”) will offset Granger Water’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 Water’s rate base for collections not related to utility plant.

Mr. Wilson then testified as to Granger Water’s capital structure. Ms. Wilson testified that approximately seventy-five percent (75%) of initial land purchase and construction of the water plant is funded through a loan (the “Water Plant Loan”), while the remaining twenty-five percent (25%) is funded through equity contributions. The Water Plant Loan will be repaid through equity contributions of fixed curtailment releases agreed upon by Granger Water and its lending bank for each lot sold, as well as from available funds of Granger Water. 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 Water.

Ms. Wilson testified that Granger Water plans to gross-up CIAC such that payers of SDCs 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 cover 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 Water 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 determining cost of equity is a complex issue with many perspectives. Given that Granger Water is in its infancy and will not generate a return on rate base

for the initial years of operations, Granger Water does not propose a cost of equity to be approved in this Cause. For illustrative purposes only, Granger Water included an estimate of eight percent (8%), which Granger Water believes is materially lower than its actual cost of equity, for estimating required rate increases to achieve allowable net operating income.

Ms. Wilson then testified as to the rate increase required section of the allowable NOI schedule. Ms. Wilson explained 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 Water's Net Operating Income and Income Tax on Utility Operations equals its Allowable Net Operating Income. The addition of customers combined with modest rate increases according to the Commission's Alternative Regulatory Procedures ("ARP") results in closing the gap between actual rates and the rates required to produce Allowable Net Operating Income. Required rate increases decline through the estimated period as new customer growth spreads Granger Water's cost across a wider customer base. Ms. Wilson testified that the Report does not provide an estimate beyond ten years; however, Granger Utility 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. Other miscellaneous charges are included based on cost estimates provided by Granger Water's qualified operator.

Ms. Wilson then testified as to the method for determining the service call, bad check, and late payment charges. Ms. Wilson testified that the Service Call (Business Hours/Non-Emergency) 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 Water. The Service Call (Non-Business Hours/Emergency) 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 Water. Should the service call exceed one-hour, additional hours will be billed at the service contractor rate. The bad check charge is the \$25 non-sufficient fund fee charged from the bank and an overhead and billing charge of \$100. The late payment charge of ten percent (10%) on the first three dollars and three percent (3%) on amounts in excess of three dollars is typical of the charge allowed for water utilities.

Finally, Ms. Wilson testified as to the deferred accounting treatment reflected in the report. Ms. Wilson testified that the Report does not show the effect of accounting for operating losses as a regulatory asset, but rather shows all losses as recorded to Retained Earnings. Granger Water requests the ability to book Net Operating Losses from inception to the year in which it generates positive Net Operating Income as a debit to a regulatory asset, rather than a debit to Retained Earnings. While not summarized in the Report, the Report shows Net Operating Losses through year 4 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 can then be available to 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 Water.

Ms. Wilson testified that these matters are further detailed in the schedules contained in her Report.

5. OUCC's Case.

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

Ms. Sullivan first summarized the petition, the structure of ownership, and the service area. Pub. Ex. No. 1, p. 2-4. Ms. Sullivan then details the relationships and responsibilities of all entities involved in the construction of the subdivision and water utility. *Id* at p. 5-6. Ms. Sullivan testified that, Petitioner uses the name Village Development, Hills at St. Joe Farm, and Granger Water interchangeably. For ratemaking and other regulatory purposes, it is important to be able to establish which entity is acting. Ms. Sullivan testified that commingling funds between Granger Water and Village Development is unacceptable. Granger Water 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 Water as a regulated provider of water service. *Id* at p. 7.

Ms. Sullivan then testified as to Granger Water's financial assumptions used to create its *pro forma* financial statements. Ms. Sullivan testified that Granger Water's growth projection of 365 EDUs is not possible because Village Development only owns 76 acres, on which 229 lots are platted. *Id* at p. 9. Ms. Sullivan testified that she used the customer growth rate used by Granger Water in its WSMP, which results in a maximum of 229 EDUs at the end of the tenth year, rather than the growth rate used by Granger Water in its *pro forma* financial statements. *Id* at p. 10.

Ms. Sullivan then summarized the ARP program and how the increase is based on test year expenses. Ms. Sullivan then testified that she does not believe Granger Water should be granted preapproval of a rate increase using the ARP because Granger Water does not have a test year and the OUCC cannot confirm that projected expenses are reasonable and necessary to provide safe, reliable water service. Ms. Sullivan testified that, if the Commission approves the formation of Granger Water, cost-based rates will be unaffordable. Ms. Sullivan testified that the specific goal of ARP is to increase the rates by increasing the revenue requirement for operating and maintenance expenses; since Granger Water's rates are not cost-based, an ARP is not possible. *Id* at p. 12.

Ms. Sullivan testified that Granger Water 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. Ms. Sullivan also noted a regulatory asset would be significant as Granger Water will likely continue to operate with a net loss for the next decade or longer. The Owners accepted the risks

and reward associated of a startup water utility and decided the benefits outweigh the losses. *Id* at p. 13.

Ms. Sullivan then testified that the OUCC does not accept Granger Water's choice to file income taxes as a partnership because net losses are reported on the Owners income tax return, thereby reducing the personal tax liability of each Owner. Ms. Sullivan also states the Commission and OUCC should consider all filing options and determine whether Granger Water's proposed income tax expense revenue requirement is reasonable. *Id* at p. 14-15.

Ms. Sullivan testified that Granger Water should not be permitted to gross-up SDCs for income taxes because doing so is unnecessary. First, Granger Water will not generate taxable income for 19 years, possibly not that soon, and will 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 Water will fall under Section 80601 and be non-taxable. *Id* at p. 16.

Ms. Sullivan testified that the OUCC does not accept Granger Water's plan to purchase the distribution system from the Developer to avoid negative tax consequences. If the Commission approves the formation of Granger Water, Granger Water will be required to follow the main extension rules as set forth in 170 IAC 6-1.5-13 regardless of negative tax consequences. *Id* at p. 17.

Ms. Sullivan then testified that SDC cash should not be used to pay operating expenses. SDCs ensure growth pays for growth and equity between the different generations. It also ensures a cash reserve is available to finance capital needs. If SDC cash is used to pay operating expenses, the cash must be classified as operating revenue. Granger Water could possibly generate taxable income and incur a tax liability for which a rate has not been approved. *Id* at p. 18.

Ms. Sullivan testified a flat rate structure is inadequate and discourages conservation. Ms. Sullivan also testified that Granger Water's cost support for non-recurring charges is inadequate, and that customers should not be subject to exorbitant unsupported charges for such basic services as having their water shut off. *Id* at p. 18-20.

Ms. Sullivan then testifies that the Owners of Granger water intend to contribute approximately \$5,108,000 in cash over the next ten years. The Owners have already invested \$534,931 and intend to make additional \$1,481,397 cash contribution to pay for the water plant loan, \$39,228 over the first ten (10) years to create capital reserve fund, and \$290,000 per year for the distribution system loan. *Id* at p. 20.

Ms. Sullivan testified that there is a better use for the \$39,228 cash contributions labeled capital reserve. As previously discussed, the OUCC is strongly against utilities using SDC cash flow to pay operating expenses. If the Commission approves the formation of Granger Water, the OUCC recommends SDC revenue be used for capital expenditures and capital reserve cash

contributions be used to pay operating expenses. Ms. Sullivan also pointed out Granger Water will have a cash short fall of \$69,000 in its second year of operation. She further pointed out that the owners of Granger Water are not obligated to make cash contributions and the financial viability of the utility is further decreased without the cash contributions. *Id* at p. 22.

Ms. Sullivan then testified that the purchase of the distribution system will increase the rate base. Using Granger Water's assumed customer growth of 38 customers per year, the revenue requirement to meet Granger Water's return on rate base would be \$101 per month per EDU. Ms. Sullivan testified that Granger Water intends to forego the return for at least ten (10) years but has not determined the timing for a future rate case requesting full return. If the Commission approves the formation of Granger Water, it will eventually seek a return on the distribution system investment. It is also unclear under what circumstances Granger Water might elect to no longer forego recovery of its return and operating expenses earlier than ten years. *Id* at p. 24.

Ms. Sullivan testified that the OUCC does not agree with Granger Water's assumption that Granger Water will require an expansion in year seven (7) at a cost of \$500,000, which will be paid for by a cash infusion from Granger Water's owners. Ms. Sullivan testified that Mr. Parks testified that the necessary plant expansion would be more expensive and would be needed sooner than Granger Water estimates. According to Mr. Parks, Granger Water's Owners will need to make a \$1,080,000 cash infusion in year five (5). This would cause the revenue requirement for the return on rate base to increase. *Id* at p. 24.

Ms. Sullivan testified that, if the Commission approves the formation of Granger Water as a water utility, the OUCC recommends that Granger Water (1) use NARUC's System of Accounting and record transactions according to its guidelines, (2) require affiliated developer to contribute the distribution system in exchange for Granger Water providing service to the subdivision, (3) hold SDC receipts in a restricted account to be used for capital expenditures only, (4) deny grossing up the SDC for income taxes, (5) deny non-recurring charges, and (6) notify customers of Granger Water's full operating costs and the extent of owner subsidization prior to the sale of a lot or home. *Id* at p. 25.

Ms. Sullivan testified that the Owners of Granger Water do not have prior experience or the managerial capability of running a water utility. After Petitioner knew Commission approval is required, it signed a contract with Forest Beach Builders to build the utility, encumbered the utility for \$1,481,397, signed a \$7,270,000 mortgage, constructed a water plant, and is supplying water to homeowners prior to receiving approval. These actions demonstrate Petitioner lacks understanding and appreciation of the Commission's role in determining whether an entity should be permitted to provide water service. *Id* at p. 26-29.

Finally, Ms. Sullivan summarized two important facts: Granger Water's business plan is to operate at a loss for an indefinite period of time and cost-based rates would be estimated at \$168 per month per EDU if Petitioner reaches 229 customers. *Id* at p. 30.

B. Testimony of Shawn Dellinger. Shawn Dellinger, a Utility Analyst for the Water/Wastewater Division of the OUCC, provided testimony on behalf of the OUCC as to Granger Water's requested financing including both the long-term financing and encumbrances of the utility assets that Petitioner entered into in March of 2021 as well as the Petitioner's proposal

for annual borrowings from Village Development. He provided an overview of the rates charged to ratepayers based on different assumptions and scenarios. He analyzed the life cycle costs of different options for providing service to the area. He also discussed the situation of Petitioner borrowing funds without first acquiring Commission authority and the prohibition against encumbering utility assets without this authority. Further, he discussed both the Petitioner's proposed capital structure and affiliate relationships.

Mr. Dellinger testified to the structure of the long-term loan, which Petitioner closed prior to requesting Commission approval on March 19, 2021. Mr. Dellinger cited two occurrences where Mr. Matthews was informed Commission approval is required prior to issuing debt.¹ Mr. Dellinger also expressed concerns that the debt matures too quickly which will result in Granger Water needing future approval to refinance or issue new debt.² Mr. Dellinger testified that an additional loan from the developer should not be approved primarily because OUCC witness Carla Sullivan stated that these assets should not be purchased by the utility. Mr. Dellinger further expressed concerns that in the event the Commission does believe these loans should be approved, the following concerns would need to be addressed: the developer is an affiliate whose ownership mirrors that of Granger Water, the loans are requested to continue indefinitely, there is a lack of transparency as to underlying distribution system cost, and the interest rates will increase if Granger Water does not make timely payments.³

Mr. Dellinger testified that there was differing information provided to the OUCC regarding whether the utilities assets were encumbered for external borrowings. He stated that he believes that using Granger Water's property to secure a second loan under across collateralization agreement is highly problematic, if this is the case.⁴

Mr. Dellinger testified that he believes 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.⁵ Mr. Dellinger testified that potential solutions would be to extend terms on the water plant loan or to fund the expansion with debt rather than equity.⁶ Mr. Dellinger testified 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. He also pointed out that it is not appropriate for the Petitioner to utilize a cost of equity it feels is materially lower than its actual cost of equity to project required rate increases to achieve its allowable net operating income, and that Petitioner is therefore understating the rates it would ask to charge if it was seeking its entire allowable return.⁷

Mr. Dellinger then testified that the cost benefit analysis included in Petitioner's WSMP was performed by Mr. Matthews and approved by Burne Miller, PE. The cost benefit analysis did not incorporate all the factors to be considered in a life cycle cost analysis. In particular, Mr. Dellinger testified that the analysis did not recognize the significant operation and maintenance

¹ Public's Exhibit No. 2, Testimony of Shawn Dellinger, p. 3

² *Id.* at pp. 3-4.

³ *Id.* at p. 6.

⁴ *Id.* at pp. 6-7.

⁵ *Id.* at p. 7.

⁶ *Id.* at pp. 7-8.

⁷ *Id.* at p. 8.

costs associated with Granger Water operating its own water plant installation, costs of maintaining the plant, and interacting with customers nor did the analysis account for capital costs Petitioner estimates it will incur in the near term to expand the plant.⁸

Mr. Dellinger testified that a comprehensive life cycle cost analysis should consider all known and reasonably estimated costs and the year the costs will occur. Cost should be converted to present value.⁹ Mr. Dellinger testified that, including Granger Water'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 \$1,700,000, as Granger Water indicated, but is instead \$4,794,365. Based on a customer growth assumption of 24 customers per year (as used by OUCC witness Ms. Sullivan), as well as near term expansion costs provided by OUCC witness Mr. Parks, the life cycle cost is \$5,073,995.¹⁰

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 compared to the estimated cost of \$5,017,816 found in Petitioners' testimony.¹¹ He stated that these estimates show that the least cost option is a connection to Mishawaka, and that the ongoing costs alone of the new water treatment plant indicate that even treating the already incurred costs as a sunk cost indicate the most economical path going forward is to connect to Mishawaka.¹²

Mr. Dellinger discussed the costs to ratepayers that would result from different scenarios of providing water service. He analyzed the monthly and annual rates of Mishawaka providing service compared to Petitioner providing service. Mr. Dellinger further included analysis of Petitioner providing service based on various assumptions such as purchasing the distribution system and including a regulatory asset. These total charges over ten years show that connecting to Mishawaka would result in \$4,971 of charges, Petitioner's case in chief results in \$9,433 of charges, whereas the allowable monthly charges per Petitioner's case is \$29,061 and per the OUCC accounting schedules this same total is \$36,205.¹³

As part of this analysis, Mr. Dellinger pointed out that the notification to existing and prospective ratepayers of what their costs may be in the future is not preparing the potential ratepayers for what the costs may be, since it does not address potential costs in any concrete, quantitative terms. He stated that listing the current rates that would be required to recover the costs and provide a return for Petitioner would allow potential customers to be better placed to make a decision.¹⁴

Finally, Mr. Dellinger explained the ownership structure and relationships between various affiliated entities. He also testified that the fact that Granger Water is working with its affiliates creates complicating factors. Mr. Dellinger testified that presenting adequate cost support is critical to provide assurances that the utility is not subsidizing other entities controlled by the owner. Mr.

⁸ *Id.* at pp. 8-10.

⁹ *Id.* at p. 10.

¹⁰ *Id.* at p. 10.

¹¹ *Id.* at p. 10.

¹² *Id.* at p. 14.

¹³ *Id.* at pp. 15-18.

¹⁴ *Id.* at pp. 18-19.

Dellinger testified that he believes the Commission should require Granger Water to file all affiliate agreements if the Commission authorizes Granger Water to operate as a water service provider.¹⁵

C. Testimony of James T. Parks. James T. Parks, P.E, a Senior Utility Analyst in the Water/Wastewater Division of the OUCC, provided testimony criticizing Granger Water's failure to properly conduct a Life Cycle Cost Benefit analysis and evaluate connecting to the existing Mishawaka water system. He recommended Petitioner formally request a main extension cost from Mishawaka and make the connection before Petitioner needs to expand its water system.

Mr. Parks testified there is no Indiana public water system named Granger Water Utility, LLC permitted or regulated by the Indiana Department of Environmental Management ("IDEM"). Instead, the permittee for the distribution system and water treatment plant is The Hills at St. Joe Farm. He reported the subdivision developer, Village Development, LLC, constructed Section 1 of the water distribution system for 40 lots. Pub. Ex. No. 3, p. 8. Mr. Parks developed a Timeline of milestones in Attachment JTP-11. He testified Mr. Matthews incorporated Granger Water and IDEM conducted a Well Site Survey on April 8, 2019 and submitted a draft *Water System Management Plan* ("WSMP") to IDEM on June 22, 2020. He reported Petitioner included its WSMP in its case-in-chief but excluded IDEM's October 22, 2020 Demonstration of Capacity letter that was contingent upon Petitioner clarifying its disinfection method and resolving financial capacity issues listed in IURC review comments prior to IDEM activating the water system as a community water supply. *Id.* at p. 5. Mr. Parks reported the most significant financial issue identified by IURC staff in October 2020 was that "cumulative cash shortfalls could possibly be near or exceed \$1 million dollars during the first five years of operation" and that "unless Granger can provide additional information explaining how the owners plan to cover these cash shortfalls, staff believes this utility will not be financially viable." *Id.* at p. 6.

Mr. Parks testified Petitioner's service area is unclear because Mr. Matthews described it as both a 76-acre area platted for The Hills at St. Joe Farm major subdivision and a larger 151-acre area. Mr. Parks noted Petitioner reports the developer of The Hills optioned the adjacent 75 acres west of the subdivision for expansion to about 500-600 homes and Petitioner plans to expand its service area to unserved developments in unincorporated Granger, Indiana. *Id.* at p. 9. Mr. Parks testified Petitioner did not provide evidence of the purchase option and the 75-acre property is not identified, discussed, or shown on the WSMP site plan. He recommended Petitioner's service area be limited to the initial 229 single family residential lots on the 76-acres granted Primary Plat approval by the St. Joseph County Area Plan Commission ("APC"). *Id.* at p. 3. Mr. Parks also testified IDEM permitted the water system for the initial 40 lots in Section 1. *Id.* at p. 3 and p. 43.

Mr. Parks noted Petitioner assumed 24 new customers per year in its 2020 WSMP but projected 58% higher customer growth in its revised 2021 financial model of 38 customers annually for five years and 35 customers for the next five years to reach 365 customers in ten years. Mr. Parks reported the IURC staff person who reviewed Petitioner's 2020 WSMP considered a 10% or 24 per year customer addition to be too high and disagreed it should be used. *Id.* at p. 10. Mr. Parks noted Petitioner has not provided any evidence to support its initial or revised higher growth projections. Mr. Parks testified the OUCC views them as overly optimistic, unsupported,

¹⁵ *Id.* at pp. 19-21

and unlikely to occur. Mr. Parks also testified the Commission has previously noted other small water utilities including Morgan County Rural Water (Cause No. 41818¹⁶), Sullivan-Vigo Rural Water (Cause No. 42599), and Town of Lizton (Cause No. 45274 in 2019) significantly over projected their future customer counts. *Id.* at p. 11.

Mr. Parks testified Petitioner did not indicate it was serving any customers, but in discovery reported completing two wells, the water treatment plant and distribution system on August 15, 2021. Mr. Parks testified the developer's website indicated Phase 1 Lots were released for sale on October 15, 2020, but only six lots had sold through July 7, 2021, or less than one lot per month. He testified this is far below the modeled 38 new customers per year and even the original modeled 24 new customers. He testified the developer is not on track to reach Petitioner's modeled 38 new customers in year one. *Id.* at pp. 11-12. For purposes of his water demand and future expansion technical analysis, Mr. Parks nonetheless assumed the utility will add 24 new customers annually as indicated in its 2020 WSMP for a maximum connected customer count of 229.

Mr. Parks described Petitioner's water system which includes two 12-inch wells each with 600 gpm pumps equipped with variable frequency drives, six OptiPlus75 catalytic media pressure filters and two 3,000-gallon hydropneumatic tanks. He reported the well pumps solely provide the discharge pressure through the filters and Petitioner has no other finished water storage except the hydropneumatic tanks. He testified firm capacity with one filter offline is 500 gpm. Groundwater is pre-chlorinated with liquid sodium hypochlorite to oxidize iron and manganese before the filters followed by post chlorination to provide a chlorine residual in the distribution system. *Id.* at p. 12.

Mr. Parks testified subdivision planning began in 2017. He testified that prior to forming its utility, Petitioner engaged Peerless-Midwest in the Fall of 2018 to develop a groundwater supply but did not contact any area utilities to assess connecting to another water system until May 2020. *Id.* at p. 15. Mr. Parks testified new utilities must first assess alternatives to forming a utility such as connecting or interconnecting to an existing utility through a required cost benefit analysis. *Id.* at pp. 13-14. He testified the cost benefit analysis requirement under the WSMP Rules, 327 IAC 8-3.6-6, was modified by IC 13-18-26-3 that requires a life cycle cost-benefit analysis. *Id.* at 13. He testified this analysis supports reducing the number of small, financially non-viable and distressed water utilities by regionalizing with larger water utilities to improve performance, operation and maintenance and infrastructure management while maintaining affordable water rates. *Id.* at p. 19. Mr. Parks testified Petitioner did not properly analyze water supply alternatives because Mr. Matthews prepared the analysis, rather than a Professional Engineer or a qualified person under direct supervision of a Professional Engineer as required by the WSMP rules. *Id.* at p. 34. Mr. Parks noted Petitioner's analysis was not of life cycle costs but only capital costs without expansion, equipment replacement, and annual operating and maintenance costs. Mr. Parks also testified Petitioner did not support its capital costs with design assumptions, unit costs, or basic information the OUCC requested such as diameter, length of main, pipe type, capacities (in gpm) of the two booster stations, and the assumed connection points to area utilities. *Id.* at p. 33-34.

Mr. Parks testified Petitioner appeared to have decided early during subdivision planning to build and operate its own utility without evaluating connecting to an existing utility as required under WSMP rules, 327 IAC 8-3.6-6, and without preparing the Engineering Feasibility report

¹⁶ Actual Cause No. is 41848.

required by Section 153.062 (D) of the St. Joseph County Subdivision Control Ordinance. He reported Mr. Matthews indicated he started talks three or four years ago to purchase the land for The Hills at St. Joe Farm from Mr. Paul Blum who suggested putting in wells to serve the subdivision. *Id.* at pp. 14-15. Mr. Parks reported it appears Petitioner did not notify area utilities it had formed a new water utility until after Peerless-Midwest informed it such notice was mandatory to obtain WSMP approval. *Id.* at p. 15 and p. 17. Mr. Parks testified Petitioner had nearly three years to connect to the nearest water utility which would have been ample time to complete construction if it had pursued such a connection to Mishawaka's water system in 2018 or 2019. *Id.* at p. 16.

For purposes of the WSMP, Mr. Parks testified Petitioner relied on a May 29, 2020 notification form letter to the St. Joseph County Regional Water and Sewer District ("SJCRW&SD") and Mishawaka stating it contracted Peerless-Midwest to develop a water supply and asking if they would be "interested in assisting with supplying a potable water supply" without defining the phrase. *Id.* at p. 17. He stated Petitioner never identified its water demand including its fire demand or pressure requirements, did not ask for possible connection points, main extension routes or costs and did not invite the utilities to visit the subdivision property and meet with Granger Water to discuss water service. Mr. Parks faulted Granger Water for not mentioning costs nor when it would need the main extension. Mr. Parks testified these are standard coordination items between utilities and developers seeking water service. Mr. Parks testified Granger Water never requested a main extension or cost to connect from any water utility and did not refer to the Commission's Main Extension rules." *Id.* at pp. 18-19. Mr. Parks testified the notification letter does not fulfill the WSMP purpose since it does not seek information needed to evaluate connecting to an existing utility, begin the main extension process, secure needed funds, and that it was provided too late in the process. *Id.* at p. 19. He testified it appears Petitioner's notification form letter was unlikely to elicit anything other than a no interest response and that "It is unreasonable for Granger Water to expect water utilities would extend water mains at no cost to Granger Water or that such a connection could be accomplished absent any direct request from Granger Water and that it could be completed within a year." *Id.* at p. 19.

Mr. Parks testified the developer's engineer submitted to the APC a "Feasibility Study for The Hills at St. Joe Farm Major Subdivision" that omitted required information of distance to the nearest public water mains, their capacity to serve the development, and the estimated main extension cost. He reported the letter only notified the APC that a private utility would be built by the developer. *Id.* at pp. 20-21. Mr. Parks testified the engineer's letter did not distinguish between the developer and the utility, both owned by Mr. Matthews, did not inform the APC that Petitioner would retain the water system or that it will lose money even under overly optimistic customer growth projections. He stated the letter provides no construction or O&M cost information whatsoever and incorrectly states the water system, like the sewer system, would be turned over to the SJCRW&SD. *Id.* at p. 21. Mr. Parks testified the letter to the APC differs from information provided to the SJCRW&SD because it does not mention Granger Water or state the water system would be donated to the SJCRW&SD, which would then own, operate, and maintain the system. Mr. Parks concluded the developer, The Village Development LLC, provided different information to two governmental agencies, failed to note work done, and did not mention Granger Water intended to build its own water treatment plant. *Id.* at p. 22.

Mr. Parks testified Petitioner provided no evidence it requested a main extension or initiated follow-up with any area utility about connecting to its system. Regarding service from Mishawaka, Mr. Parks reported that in response to discovery Petitioner stated “There were no additional communications other than those provided in Attachment JPM-6. Granger *did* meet with the city administration, but nothing came from said meeting and no written notes or minutes were taken.” *Id.* at p. 23. Mr. Parks clarified that it was Mishawaka, not the Petitioner who requested the August 5, 2020 meeting between Petitioner and the Mayor, City Planner, City Engineer, Water manager Dave Majewski, and Bill Schalliol, St. Joseph County Executive Director of Economic Development to explore ways to provide water to the development. *Id.* at p. 23.

Mr. Parks then testified David Majewski, Mishawaka Water manager, indicated Mishawaka is interested in providing water service and stated he wished the City had been approached earlier in the process. Mr. Parks testified it would have been beneficial if Peerless-Midwest, Petitioner’s contractor, who is also a contractor for the City, had alerted Mr. Matthews of the need to contact Mishawaka about water service early on in the process. Mr. Parks reported Mr. Majewski said he became aware of the subdivision and Granger’s proposed water utility in late May 2020 through Petitioner’s notification form letter, but he considered it too late to become involved in providing water because of Petitioner’s schedule and the already made decision to start a new water utility. *Id.* at p. 24.

Mr. Parks testified Mishawaka requested the August 5, 2020 meeting because Mishawaka realized the need for project details including demand volumes, main sizing, possible tie in points, water main routes, and cost information. *Id.* at p. 25. Mr. Parks testified Mr. Matthews did not request a main extension or cost estimate from Mishawaka but Mr. Majewski indicated the City offered to have DLZ Engineers study how best to serve the subdivision and to develop costs. Mr. Parks reported Mr. Majewski indicated because Petitioner did not appear interested in the study, possibly due to the schedule, Mishawaka did not engage DLZ for the analysis. Mr. Parks testified he understood no further work was done by Mishawaka. *Id.* at p. 25.

Mr. Parks stated Mishawaka informed Petitioner its standards allow only ductile iron water mains and K copper service lines and recommended Mr. Matthews follow them. Mr. Parks reported Mishawaka serves customers outside City boundaries and provided three recent examples including the 2019 Beacon Granger Hospital extension and the 2021 McKinley Ave. extension. He testified that Mishawaka installs approximately four miles of water mains annually with its own crew and equipment. Mr. Parks testified Mr. Majewski confirmed \$125 per lineal foot is a good benchmark cost for Mishawaka to install 8-inch ductile iron pipe which was also confirmed by costs in the 2019 RS Means Manual for material, labor, equipment, and contractor overhead and profit. *Id.* at pp. 25-27. For water service on the north side of Mishawaka, Mr. Parks reported Mishawaka is constructing improvements including the new 8.2 MGD Juday Creek groundwater plant located 2.25 miles southwest of Petitioner that should be in service by July 2023. *Id.* at p. 28.

Mr. Parks testified Mishawaka’s current metered charges for customers outside City limits using 5,000 gallons per month with fire protection would be \$37.83 per month including sales tax. *Id.* at p. 27. He reported Mishawaka does not have a flat rate and recommended Petitioner meter all customers because as noted by the IURC, flat rates are a thing of the past. *Id.* at p. 28. Mr. Parks reported Petitioner’s proposed \$75.00 flat monthly rate (\$80.25 with sales tax) is set below its actual costs to not stymie lot sales but yet is more than twice Mishawaka’s rates. Referring to

OUCG witness Sullivan's testimony, Mr. Parks noted Petitioner is asking to use its System Development Charge to cover operating expenses and is also proposing a Regulatory Asset to recover operating losses from ratepayers in future proceedings. *Id.* at p. 28.

Mr. Parks testified he did not agree with Mr. Matthews assertion that Petitioner's proposed \$75.00 flat rate is reasonable. *Id.* at p. 29. He did not agree all customers will know they are being charged \$75 per month because the charge is not listed on pertinent websites and the disclosure in Attachment JPM-12 to potential customers about the proposed \$75 flat rate and the possibility future rates will increase due to cost recovery of the regulatory asset is inadequate. *Id.* at p. 30. Mr. Parks testified Petitioner proposes to charge less than its actual costs for purposes of its initial approval to operate a utility, but it is unclear whether Petitioner believes it could seek to recover an actual full-cost-based rate at any time. He noted the negative consequence of initial rates not being cost based is customers will not be aware of significantly higher rates they would pay if Petitioner or any successor in interest sought to recover all operating expenses and a full return on investment. Mr. Parks recommended if the Commission authorizes this utility, Petitioner be required through its affiliates to disclose to potential purchasers the actual rates it considers to be allowable and that such rates be clearly posted on its website at a minimum. *Id.* at p. 30.

Mr. Parks disagreed with Mr. Matthews unsupported general claim that municipalities charge below cost rates "which makes the proposed \$75.00 rate seem artificially high" noting two area utilities (South Bend and Elkhart) are regulated by the IURC and Mishawaka was previously regulated. Mr. Parks stated Petitioner offers no evidence regarding water rates at area municipal water utilities nor how much below cost he believes them to be. *Id.* at p. 30. Mr. Parks provided a table comparing Petitioner's proposed \$75 monthly flat rate to other area utilities' rates which showed Petitioner's rate is significantly higher. *Id.* at p. 31. Mr. Parks also disagreed with Mr. Matthews assertion that Granger's water rates must necessarily be higher because "Granger Water, as a utility serving exclusively residential customers, has no other class that can subsidize residential users" because this viewpoint does not align with cost-based ratemaking principles that are nondiscriminatory toward customer classes. *Id.* at p. 30.

Mr. Parks testified that based on his review of SJCRW&D sewer rates, the single-family flat rate is \$126.53 when added to the OUCG's calculated \$213.67 per month cost-based water rate (Year 5) produces a combined water and sewer bill exceeding \$340 per month which would be one of the highest in Indiana. *Id.* at p. 32. Mr. Parks also testified Petitioner's proposed service call charge can best be described as punitive and recommended the Commission deny it. He stated the OUCG 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 Water's proposed service call and bad check charges are significantly higher than charges of area utilities. *Id.* at p. 32.

Mr. Parks then addressed his concerns with the required Life Cycle Cost Benefit analysis. Mr. Parks testifies Petitioner's assumed \$285 per LF water main cost is not reasonable and should not be used because it significantly exceeds the water main cost Mr. Parks derived from the RS Means Manual. He testified use of the higher \$285 per LF cost favors Petitioner's preferred alternative of building its own water utility rather than connecting to a nearby utility. *Id.* at p. 34. Mr. Parks testified Petitioner's assumed \$285 per LF cost more than doubles Petitioner's \$118.21 per LF water main cost for its distribution system. *Id.* at p. 35. Mr. Parks recommended using a

\$120 per LF installed cost to analyze the Life Cycle Cost Benefit of connecting to Mishawaka with \$300 per LF costs for directionally drilled pipe. *Id.* at p. 37.

Mr. Parks testified Petitioner did not support Petitioner's assumed 14,098 LF main length nor identify a connection point or route from Mishawaka's system. He stated Petitioner did not support the need for two booster stations. *Id.* at 34. Mr. Parks' analysis is based on a shorter main extension with a tie in 8,500 feet west of The Hills. He documented Mishawaka's service area and this potential main extension route in OUCC Attachment JTP-17. Mr. Parks testified initial demand should be for forty homes in Section 1 completed in 2022 to 2023. Mr. Parks estimated a \$1.92 million capital cost for a Mishawaka main extension that is below half of Petitioner's \$5,017,816.00 estimate. Mr. Parks documented his main extension cost estimate in Table 5 and in his workpapers. Mr. Parks stated the OUCC estimate is based on a 12-inch ductile iron pipe and one booster station instead of two to supply the maximum day flow to 500 homes and a one-hour duration 1,200 gpm fire flow but if elevated storage was provided near the subdivision, a smaller diameter main could be installed. Mr. Parks testified Mishawaka would determine the main size, route, tie-in point, and elevated storage. He recommended Petitioner request Mishawaka prepare a main extension plan and develop a cost to serve the subdivision. *Id.* at pp. 37-39.

Mr. Parks testified Petitioner's Cost Benefit Analysis did not include all costs expected to occur in the near future for finished water storage and system expansion. He testified none of these costs are identified in Petitioner's one-page Cost Benefit Analysis and none of the equipment replacement costs Petitioner identified in the WSMP are accounted for which, if properly included, would increase the present value cost of Petitioner's preferred alternative of a utility owned and operated water plant. Mr. Parks testified the overestimated Mishawaka main extension costs and absence of expansion, equipment replacement, and annual O&M costs tilted the analysis against connecting to the Mishawaka water utility. He referred the Commission to OUCC witness Dellinger's Life Cycle Cost Analysis that reflects the OUCC's estimate to connect to Mishawaka and includes the expansion and equipment replacement costs and the annual O&M costs for the Petitioner owned water treatment plant option. *Id.* at p. 40.

Mr. Parks testified that instead of a clearwell or distribution system storage, Petitioner installed two hydropneumatic finished water storage tanks that are allowed only for very small systems with no more than 114 homes or 400 persons. He stated that under Indiana's Public Water Supply regulations, 327 IAC 8-3.4-14 and Ten States Standards, hydropneumatic tanks are not allowed for fire protection purposes and can serve only. For systems serving more customers, Mr. Parks testified Ten States Standards and IDEM requires ground or elevated finished water storage per the OUCC's discussion with IDEM. *Id.* at p. 41.

Mr. Parks testified Petitioner provided no support or information on system expansion costs other than Petitioner's witness Wilson indicating initial water plant assets are sized for 260 customers with additional plant capital expenditures of \$500,000 occurring in Year 7. *Id.* at 42. However, in response to discovery about expansion, Petitioner stated "three filtration vessels and one hydro-pneumatic tank will be needed" but did not indicate the need for wells or distribution system storage tanks. *Id.* at 43. Mr. Parks testified that for the treatment plant permit, Petitioner listed 14,000 gallons per day as the average daily consumption sufficient to only serve Section 1's 40 homes at 350 gpd per home. The 40 homes match the distribution system construction permit. *Id.* at 43. Mr. Parks testified the permits are only for the current construction to serve 40 homes

and do not address expansion although the treatment plant building has floor space for one more hydropneumatic tank and three more filters. *Id.* at 43-44. He reported that based on the OUCC's discussion with Mr. Lance Mabry, P.E. of IDEM, Petitioner would need to install a third well for redundancy or some form of finished water storage because the hydropneumatics tanks are insufficient for finished water storage needs. *Id.* Mr. Parks testified none of Petitioner's assumed additional equipment (hydropneumatics tank and pressure filters) are needed, noting again that IDEM will not allow another hydropneumatic tank. He also stated Petitioner does not need more filters since the six pressure filters have enough firm rated filtration capacity to produce 720,000 gpd, which can meet 72,000 gpd of fire flow and maximum day demands from 1,029 homes *if* finished water storage is provided. He testified Petitioner has sufficient well and filtration capacity but no place to store treated water during low demand periods. He noted the filters can fill each hydropneumatic tank in just three minutes, but after that, if demand is low, the well pumps and filters will have to be effectively idled. He noted there is a limit to how low the well pump variable frequency drives ("VFDs") can be turned down. *Id.* at pp. 44-45.

Mr. Parks testified Petitioner, if allowed to form a water utility, should install finished water storage rather than another hydropneumatic tank and more filters. Mr. Parks calculated the cost to construct a 200,000-gallon elevated storage tank ("EST") would be \$1,080,000. He provided the EST cost calculations and assumptions for land and a 12-inch transmission main from the water plant to the tower. Mr. Parks' \$1,080,000 cost estimate to install adequate finished water storage is double Petitioner's assumed but unsupported expansion cost. *Id.* at pp. 46-47.

Mr. Parks testified that based on his \$1.92 million main extension cost and \$1.08 million expansion cost (for finished water storage), OUCC witness Dellinger completed a more accurate life cycle cost analysis showing a Mishawaka main extension would have the lowest life cycle cost. *Id.* at 48. The OUCC's analysis also used Petitioner's assumed water system operating and maintenance costs of \$75,536 in Year 1 rising to \$121,689 in Year 10. Mr. Parks testified he agreed with Mr. Dellinger's analysis and conclusion that connecting to Mishawaka's water system is the best option. Mr. Parks testified the benefit part is that ratepayers would enjoy Mishawaka rates that are less than half of Petitioner's proposed \$75 flat rate and they would also avoid punitive service call charges. *Id.* at pp. 48-49. He repeated that Petitioner should have conducted a proper life cycle cost analysis beginning with requesting a main extension cost estimate early in 2018 from Mishawaka, the nearest water utility best able to serve his subdivision. Mr. Parks testified Mr. Dellinger also shows the Mishawaka extension would remain the best option even when considering Petitioner's sunk cost in its wells and treatment plant. *Id.* at p. 48.

Mr. Parks then recommended that the Commission approve the temporary provision of water service through Petitioner's newly installed wells, water treatment plant and water distribution system to a limit of 114 homes equal to the capacity limitations of the hydropneumatic tanks. He recommended the Commission recognize that Petitioner's Cost Benefit Analysis does not conform with requirements for a Life Cycle Cost Benefit analysis because it was not prepared by a Professional Engineer or a qualified person under the direct supervision of a Professional Engineer. He testified Petitioner did not support its assumed costs to connect to existing water

utilities including the City of Mishawaka's water system and omitted separate water utility costs for expansion, replacement, and annual operating and maintenance expenses. *Id.* at p. 49.

Mr. Parks recommended the Commission direct Petitioner to conduct a proper Life Cycle Cost Benefit analysis that compares main extension costs developed by Mishawaka to costs for a separate water utility that also includes finished water storage expansion, equipment replacement, and annual operating costs. *Id.* at pp. 49-50.

Mr. Parks recommended that before Petitioner must expand its water system with finished water storage when it reaches 114 homes connected to the system in years 4 or 5, the Commission should require Petitioner to require the developer, The Village Development, LLC connect to the larger and lower cost Mishawaka Water Utility via a main extension and that Petitioner cease operation of its wells and water treatment plant. He recommended the well pumps and motors, the pressure filters and the hydropneumatic tanks be removed and salvaged at Petitioner's expense and that sunk costs for the wells and water treatment system should be recovered by the developer in the lot sale costs in the same manner as all other subdivision improvement costs, including site clearing and grading, roads, sidewalks, sanitary sewers, drainage, natural gas service, electrical service, the 6-acre storm water pond, and the 4-acre community park. *Id.* at p. 50.

Mr. Parks recommended that the Commission direct the subdivision developer to formally request from Mishawaka a main extension and the required cost following the Commission's main extension rules. He testified the OUCC estimated the subdivision could possibly be served via a 12-inch ductile iron water main and one booster station from the Beacon Parkway water main for \$1.92 million. Mr. Parks testified the developer, The Village Development, LLC is responsible for funding the main extension but is eligible for reimbursement of a portion of its main extension costs by subsequent connectors. He noted one subsequent connector could be the same developer who indicates it holds an option on 75 acres along the possible main extension route west of the current 76-acre subdivision. Mr. Parks testified Mishawaka should pay additional costs to upsize the main in accordance with Commission rules. *Id.* at pp. 50-51.

6. Petitioner's Rebuttal Case.

A. Rebuttal Testimony of J. Patrick Matthews. Mr. Matthews testified that the OUCC is outside of its lane, collaterally attacks IDEM's actions, and bases its case on blue sky assumptions, misinformation, and the fantasy that Mishawaka is willing and able to extend a main to serve The Hills. While the OUCC prefers a regional solution via Mishawaka, the fact is that the regional solution is not practicable, and Mishawaka will not extend a water main to The Hills. County leaders understand these facts, which is why they have supported Granger Water.

Mr. Matthews first testified as to Granger Water's failure to obtain Commission approval prior to taking out a loan. Mr. Matthews apologized that Granger Water closed its loan without Commission approval and testified that, while not an excuse, the loan needed to be closed before Commission approval was sought because of the development timeline required. He stated that by the time he learned that financing authority was required, Granger Water was too deep into the process to stop and needed to close the loan before a request for financing authority could be brought. He stated that significant additional expense would have been incurred if the timeline

was disrupted or extended. Mr. Matthews testified that Granger Water never made a decision to intentionally proceed without the proper authority before he learned of the requirement. It was ignorance. It was late in the process that Granger Water learned of the filing requirement. Mr. Matthews testified that, during the height of the pandemic, it was very difficult to get someone on the phone to discuss these issues and meeting in person was out of the question. Mr. Matthews testified that processing the information gathered and finding the right consultants during the pandemic was like putting together a jigsaw puzzle with only a partial idea what the final product was supposed to look like. He stated that the public need and the desire of the local community for this solution, and that Granger Water is willing to abide by enhanced reporting requirements or other measures to demonstrate its dedication. He stated that Granger water did not try to hide the loan from the Commission or otherwise attempt to cover up the loan, and that they owned up to the issue, which is what the Commission should want.

Mr. Matthews clarified that Granger Water proposes that the initial service area consist of the 151 acres located in St. Joseph County and depicted on the map attached to Mr. Matthews' direct testimony as Attachment JPM-4, which includes the 76 acres being developed now, as well as the 75 acres under site control through an option, in the form of a right of first refusal, granted to The Village Development LLC.

Mr. Matthews testified that it is his understanding that the Indiana Code does not require a certificate of public convenience and necessity to provide water service and cited to certificate requirements applicable to electric, gas, sewer, and telecommunications utilities. Mr. Matthews explained that Granger Water requested a certificate so that it is only deemed to be holding itself out as providing water service within its proposed 151-acre service area. Granger Water wants only to be required to provide service to the 151-acre area during its early years so it can focus on getting up and running and building its customer base before it looks to expand beyond its initial 151-acre proposed service territory and also so that Granger Water can reserve capacity for the customers it was intended to initially serve (i.e., the Hills). He stated that the OUCC's case is underpinned by an assumption that a certificate of public convenience and necessity is required to provide service. Mr. Matthews stated Granger Water's position that this is not a case evaluating whether Granger Water should be allowed to operate; rather, it is a case to establish initial rates and charges and for certain other ancillary relief. He noted that IDEM has approved the WSMP subject to the Commission establishing rates and charges. Mr. Matthews stated 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 rates were approved, that WSMP contingency would be satisfied.

Mr. Matthews testified as to the growth projections used by Granger Water. Mr. Matthews testified that the area Granger Water 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 no binding requirement to connect to the water system. According to Mr. Matthews, this is an important distinction from the situation with Granger Water because the homes in those other cases had wells, so there was no compulsion to obtain service. In contrast, each home in The Hills will be connected to Granger Water at the outset. The whim of the customer connecting is eliminated for Granger Water as every home in The Hills will be required to be a customer per the approved plat.

Another reason the growth projections are reasonable in Mr. Matthews' opinion is that the Granger area is proximate to large population centers (South Bend, Mishawaka, and Elkhart). Granger is also an affluent area with a strong demand for housing. Mr. Matthews testified that initial lot sales have borne out Granger Water's projections. Mr. Matthews testified that, as of pre-filing of his rebuttal testimony, The Hills had 29 lots in various stages of the sale cycle: 11 had closed, 4 had signed a contract and closing is pending, 7 were determining their selections prior to contract, 2 were reserved for model homes, 1 was a spring 2022 showcase home, and 4 were quick-move-in homes. Using May 1, 2021, as a start date (i.e., the beginning of the month 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 stated that in his opinion, St. Joseph County can support 1,000 new homes a year based on his experience.

Mr. Matthews testified that Mr. Parks' claim that SJCRWSD's sewer rate was \$126.53 is wrong. Mr. Matthews produced SJCRWSD Ordinance No. 2021-1, which was passed on August 5, 2021 that added a Class III user (defined as the users located within The Hills) and that established a flat monthly sewer charge for Class III users of \$77.33.

Mr. Matthews also testified that the OUCC's position on service from Mishawaka is based on faulty information. Mr. Matthews testified that Mr. Parks appears to have determined early on to oppose Granger Water's request and decided to identify every potential argument he could muster against Granger Water. Had Mr. Parks done more homework, he might have seen more of the blind spots in his testimony. One of those blind spots is his incorrect assertion that Mishawaka is willing and able to provide service based on a conversation with Dave Majewski, who isn't the decision maker on this point. Simply put, Mishawaka has no interest in serving The Hills despite what Mr. Majewski might have relayed to Mr. Parks. Mr. Matthews stated that Mishawaka is under no compulsion to serve, and that Mishawaka clearly stated in meeting with Mayor Dave Wood, City engineer Chris Jamrose, City Planner Ken Prince and Mishawaka's engineering consultant, Lawson Fisher Associates PC that an extension to the Hills was not imminent. Mishawaka further stated at an August 5, 2020 meeting with Mr. Matthews that Mishawaka's plan is to expand East, not North. Mr. Matthews testified that if Mishawaka was truly interested in serving, it would not have signed the no interest letter and would have intervened in this proceeding.

Mr. Matthews testified that Mr. Parks, in furtherance of his effort to support a connection to Mishawaka, collaterally attacks the WSMP approved by IDEM. Mr. Parks cited the IDEM Capacity Rule, which is not a rule or regulation promulgated or adopted by the Commission. Mr. Matthews testified that, in asserting that an extension from Mishawaka is feasible, Mr. Parks revisits IDEM's determinations with respect to 327 IAC 8-3.6-6 of the IDEM Capacity Rule that applies to managerial capacity. Specifically, 327 IAC 8-3.6-6(3) provides the requirement that a proposed new system assess consolidation or interconnection with another public water supply system. IDEM has already reviewed this and did not make it a "condition" of its determination. Mr. Parks cannot collaterally attack in this proceeding the action of another state agency that has already made its determination. Mr. Matthews testified that Mr. Parks' assertion that The Hills should have connected to Mishawaka is completely without support, constitutes a collateral attack on IDEM's determination and should be ignored by the Commission.

Mr. Matthews testified that he did not predetermine to start Granger Water as a stand-alone utility, he stated that he wanted to build a subdivision served by utilities due to the greater densities that utility service affords. The original intent was to donate both the water and sewer utilities to the SJCRWSD, but this was determined that SJCRWSD could not accept the donation of the water utility assets with any debt attached to it. Connecting to Mishawka was not a viable option as it would be too costly. He stated that no written record of these conversations exists, but that the president of SJCRWSD provided a letter supporting Granger Water.

Mr. Matthews testified that, if the Commission takes the stance that a utility should be denied just because it is a start-up and does not have huge customer counts in its early years, this would act as a de facto bar to the state policy that allows new water utilities to be created. Granger Water is located in an affluent area with high housing demand and will not depend on the whim of homeowners to connect because with each new home sold, a customer will be gained. The demographics and trends indicate that Granger Water is more likely to succeed than other water utilities with high hopes for customer growth in more rural areas.

Mr. Matthews testified as to Granger Water's affiliate relationships. Mr. Matthews testified that he agrees there may have been some confusion when mistakenly referring to the wrong entities at different points. For example, in IDEM's determination with respect to the WSMP, IDEM notes that the plans and specifications were labeled "Hills at St. Joe Farms (formerly Granger Water Utility LLC)". It was simply an accidental and unfortunate labeling of the documents. Granger Water will take corrective action to ensure that Granger Water is identified as the correct public water system. Despite this confusion, there has been no commingling of funds after the property was contributed between Granger Water and any of its affiliates.

Mr. Matthews also testified that the involvement of affiliate entities exploits the utility in the interest of the affiliate and to the detriment of the rate payers is generally a concern of the OUCC and is an issue for any investor-owned utility. Granger Water has provided full disclosure of its affiliates. Granger Water will also file annual reports with the Commission as required of all public utilities that should also help track the flow of funds. Virtually every time Granger Water has discussed its financial model, it has been stated that the members will be making additional equity injections. The flows of cash are going the wrong direction for abuses of the affiliate relationship (i.e., Granger Water is taking cash, not sending cash out). Granger Water disclosed the affiliate contract for the construction of the shell for the water treatment plant, and the OUCC did not identify any evidence that the contract was unreasonable. Granger Water's actual construction budgets and operating expenses have not been challenged by the OUCC. Granger Water is subsidizing the rate payers under its proposal, not any of its affiliates.

Mr. Matthews testified as to Granger Water's finances and its technical and managerial ability. In response to Ms. Sullivan's assertion 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," Mr. Matthews testified that, while losses may be accruing from a utility books perspective, the enterprise value of the system increases over time. Granger Water's financial models have been reviewed, vetted and underwritten by large and sophisticated stakeholders, including Granger Water's lenders and a certified public accountant (who also maintains a 35% interest in Granger Water through his holding company, Circumlocution LLC, with personally invested funds). Teachers Credit Union ("TCU") provided the debt funding for Granger Water and reviewed the financial models both

internally and with the help of an independent outside business valuation by Kruggel Lawton CPAs (“KL”). KL is the largest regional CPA firm in South Bend. TCU and KL recognize that the sponsors (Mr. Matthews and Mr. Keber) are sophisticated managers and are well funded.

Mr. Matthews testified that Ms. Sullivan claims she makes her pro forma financial statements based on “Indiana Code, traditional rate making policy and more reasonable assumptions.” (Sullivan Testimony at page 2, lines 16-17). Mr. Matthews testified that Ms. Sullivan’s testimony contains exactly one citation to the Indiana Code, which has nothing to do with the mechanics of rate-setting or utility financial statements but merely provides that Granger Water cannot opt out of Commission jurisdiction for 10 years.

Mr. Matthews testified that, as to Ms. Sullivan’s claims concerning the reasonableness of the assumptions contained in her financial review, Granger Water has produced significant evidence that its assumptions are more reasonable than those of the OUCC, which contain multiple errors and rely on unsupported assertions. Mr. Matthews also testified that Granger Water should be able to determine its own IRS filing status in order to mitigate risk to the best of its ability. Mr. Matthews also testified that the distribution system loan should be immaterial from a customer rate perspective, as it was simply designed for tax purposes, and Granger Water has already committed not to include the value of the distribution system in its rate base.

Mr. Matthews stated that the OUCC adheres to a notion of capital structure that hamstringing the utility, Granger Water has a plan in place to get its loan paid off quickly. He stated that the OUCC’s suggestion to extend the debt to reduce the weighted average cost of capital is old school thinking and has no place in Granger Water’s business plan.

As to Ms. Sullivan’s testimony regarding potential tax code changes, Mr. Matthews testified that, if the legislation passes with the CIAC language, then the developer will contribute distribution system phases and that issue is mooted. As to the SDCs, Granger Water asks that it be authorized to use SDCs to reimburse itself for the capital outlays required to build the water treatment plant. The Commission has previously granted authority to use SDCs for reimbursement (see Order in Cause No. 43435 issued on February 11, 2009, not affected by Order on Reconsideration in Cause No. 43435 issued on March 25, 2009). If the reimbursement authority is granted, it eliminates a taxable event and eliminates the issue of using SDCs to pay operating expenses. He further stated that Granger Water should be granted authority to use SDC’s for either operating expenses or reimbursements on capital outlays, as the tax code allows.

Mr. Matthews also testified that Ms. Sullivan is incorrect in her assertion that Granger Water’s owners are not required to make equity contributions if lot sales fall below anticipated levels. The members of Granger Water have personally guaranteed the debt of Granger Water. If lot sales are less than anticipated the members will be required to make cash equity contributions to Granger Water in order for Granger Water to meet its debt obligations.

Mr. Matthews testified that Ms. Sullivan’s list of actions taken without Commission approval completely misunderstands corporate law. First, Ms. Sullivan is not an attorney. Second, she interprets Ind. Code § 8-1-1.9-4 to mean that before a water utility can be formed, someone must petition the Commission as an individual to file articles of incorporation to create the utility. The better interpretation of that statute, especially in light of its reference to the opt out statute, is

that newly formed water utilities are subject to full Commission regulation for 10 years, not that potential shareholders or LLC members must petition the Commission as individuals to file articles of incorporation and establish a utility. Mr. Matthews also addressed Ms. Sullivan's claim that Granger Water's board needed Commission approval before adopting a resolution to seek Commission approval of rates by pointing out that from a corporate law perspective, Granger Water would not have had the requisite corporate authority to pursue rate relief unless its board authorized such approval.

As to Mr. Dellinger's testimony regarding cross-collateralization, Mr. Matthews testified that these agreements are standard practice in the industry. He stated that the lender wants as much security as possible, and that the lender sees this entire project, the subdivision lots, the sewer lift station, and Granger Water as one project. He stated that cross collateralization agreements are standard operating procedure for sophisticated borrowers and developers and the Commission should treat this as a non-issue. Mr. Matthews testified that Mr. Dellinger's analysis ignores rate increases already passed by Mishawaka and pointed out that Mishawaka's future pricing is unknown and not regulated by the Commission. Granger Water's pricing, on the contrary, is stable, known and regulated by the Commission.

Mr. Matthews testified that Mr. Parks' implicitly challenged Granger Water's technical and managerial ability through his questioning of the system chosen by Granger Water. Mr. Matthews testified that Granger Water hired some of the most respected contractors in Indiana, Peerless Midwest and Astbury Water Technology. Furthermore, Mr. Parks' testimony questioning the plant design is unfounded, based on assumptions, and doesn't account for the fact that Mishawaka refuses to extend service to The Hills.

Finally, in response to Mr. Dellinger's concerns about the form of notice alerting potential customers to potential rate increases, Mr. Matthews testified that Granger Water copied the notice almost verbatim from the notice the Commission approved pursuant to a stipulation signed by the OUCC in the Cause No. 42011. Mr. Matthews testified that Granger Water believes the notice is reasonable and sufficient based on the Commission's prior approval of similar notification language.

B. Rebuttal Testimony of Steve Smith. Steve Smith, co-owner and managing broker of Irish Realty, a residential brokerage firm specializing in new construction and development, also provided testimony on behalf of Granger Water refuting the OUCC's assertion that Granger Water's customer growth projections are unreasonable and overly optimistic.

Mr. Smith testified that homebuyers and the residential brokerage community have hailed The Hills as a long overdue and sorely needed addition to housing supply in Granger/Penn Harris Schools/Discovery Middle School areas. Prior to The Hills opening in 2021, it has been more than 15 years since a development with more than 100 homesites has been developed in this area. Demand in The Hills has been virtually unprecedented with Mr. Smith's clients alone taking 15 reservations, of which 8 clients have signed purchase contracts prior to the opening of the model and the paving of the streets in May 2021. Mr. Smith's clients now have 31 reservations and/or contracts in The Hills.

Mr. Smith testified that, based on his 16 years of experience in the residential real estate industry, he believes The Hills can add around 40 customers per year continuously for the remainder of the 229 subdivision currently contemplated. Mr. Smith testified that there is significant demand for new housing in the St. Joseph County area due to limited supply. Permits have been steadily rising for the past several years from lows in the mid-100s/year in St. Joseph County. Mr. Smith believes permits are headed back to the historic range of 800-1,000/year. Mr. Smith estimates demand for new homes in the Granger area to be in the 200-250/year range for the next 5-10+ years based on historic building permits, tight supply, and household/school preference. The Hills has been in planning since 2017 and enjoys a superior location, a unique advantage of water/sewer availability, and the strength and desirability of a large community with additional amenities. The absorption rate is already clear to see compared to other developments and there are no signs in the marketplace that this demand will be satisfied or saturated anytime soon. Mr. Smith testified that he believes Granger Water's customer growth of 38 customers per year is reasonable. Mr. Smith testified that he believes, in a slow year, Granger Water might add 32-33 customers, and, in the strongest years, Granger Water could add up to 40-45 customers.

Mr. Smith testified that, over the past decade, he has seen homebuyers exhibit a sharp increase in demand/preference for water and sewer as more and more home buyers consider it a deal breaker on a purchase and will not consider a home on well and septic. Increased knowledge and understanding of the health risks associated with ground water contamination and the high cost of replacing septic systems has also increased consumer awareness and demand for water and sewer.

Mr. Smith testified that the price point for homes in The Hills (\$300-\$600K+) leads him to believe that homeowners buying in The Hills will find a \$75 monthly water bill to be absolutely reasonable and will not depress the customer growth rate for Granger Water. He believes the \$75 per month flat rate will be readily accepted by the marketplace.

Mr. Smith stated that his understanding is that the Hills currently has 14 contracts, 1 model home, and 5 spec homes. Mr. Smith testified that lot inventory outside of The Hills is virtually non-existent, which is a dramatic change that has occurred over the past 3 years. The Hills represents more than 30% of the available lot inventory in Granger/Penn Harris Schools/Discovery Middle School area and closer to 50% of the inventory that can support homes under \$500,000. Mr. Smith testified about the characteristics of three competitors but stated that the closest competitor subdivision has high tension electric lines, no significant water features, few trees, and few common amenities.

Finally, Mr. Smith further testified about the desirability of the Granger area. Mr. Smith testified that when buyers look on Zillow and see Granger school ratings of 9 and 10 compared to ratings of 1-4 in South Bend and other areas, many buyers view this an easy decision and the best and most desirable option. Granger's easy access to the two major hospital networks which are the second and third largest employers in the area satisfies the need of many "on call" professionals to live within 25 minutes of work. The Grape Rd./Main St. corridor is the second largest retail/restaurant corridor in the state second only to the Keystone Parkway area in Carmel/Indianapolis and provides ample dining, shopping, and entertainment opportunities. Granger has easy access to the I-80/90 toll road and South Bend International Airport. Granger provides a dense population of high value homes which create stability and desirability in

enjoyment and resale value. The Penn Harris School District is consistently one of the top in test scores, achievement, graduation rate and other key performance metrics for admission to college, for athletics, and for other extracurricular activities.

C. Rebuttal Testimony of Michael Williams. Michael Williams, the Chief Executive Officer of Peerless-Midwest, Inc., also provided testimony on behalf of Granger Water refuting the OUCC's positions on the alleged system design issues within the Granger Water system. In response to Mr. Parks' life cycle cost analysis and discussion of future expansion, Mr. Williams testified that future expansion of Granger Water's water treatment system will be possible. The wells have sufficient capacity to incorporate an increase in flow rate by modifying the well pumps and motors. The treatment plant has space for additional filters. Additional storage can be accommodated by any of several methods. Moreover, according to Mr. Williams, Mr. Parks misstates the nature of the permits by claiming the permits are for only for 40 homes. Mr. Williams pointed out that a cursory review of the plant permit (IDEM Permit Number WS-12205) demonstrates that it is for 600 gpm, not 40 homes.

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. The plant has a much higher potential output as it is permitted, again, for 600 gpm (i.e., 864,000 gallons per day). When permitting distribution systems, IDEM only wants the average demand for that particular distribution system, not the system as a whole. Mr. Parks mixes up the IDEM permits and erroneously applies the distribution system information to make his argument about the plant capacity.

Mr. Williams testified that 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. The use of variable frequency drives with hydropneumatic tank storage is acceptable, and Mr. Parks ignores this aspect of the Ten States Standards that allows variable speed drives to greatly increase system capacity.

As to Mr. Parks' claim that IDEM will not allow additional hydropneumatic tanks, Mr. Williams testified that Mr. Parks has no basis to make this claim. Mr. Williams testified that Mr. Parks' assertion that variable frequency drives have limits to how much they can be turned down is wrong. Granger Water currently has one customer, and the system will not experience lower flows than it is currently experiencing, and the system is performing well.

Finally, as to Mr. Parks' assertion that finished water storage is required, Mr. Williams testified that the basis of design for the system involves the use of variable frequency drive controls to ensure constant pressure regardless of flow rate. The hydropneumatic tank storage is needed only for low use periods. IDEM approved this design without comment regarding additional finished water storage. Additionally, Mr. Williams identified a distinction between water storage and finished water storage. Water storage for this design is facilitated by the aquifer at this site. Per Section 7.2.2 of the Ten States Standards, variable frequency drives are utilized in lieu of additional finished water storage. Additional finished water can be furnished to the development as required with this design.

D. Rebuttal Testimony of Byron L. Miller, P.E. Byron L. Miller, P.E., a Senior Engineer at Danch, Harner, and Associates, Incorporated, also provided rebuttal testimony on behalf of Granger Water in response to Mr. Parks' testimony. Mr. Miller testified that the OUCC misses key engineering issues, misunderstands its role, and misapplies IDEM's approval of the capacity aspects of Granger Water's WSMP.

Mr. Miller testified that IDEM reviewed Granger Water's WSMP and did not deny Granger Water's WSMP, but rather issued a contingent determination finding that Granger Water's WSMP meets the requirements of the IDEM Capacity Rule with two contingencies about disinfection and financial capacity. Mr. Miller testified the disinfection contingency was remedied as shown in the construction permit issued by IDEM. As to the financial capacity contingency, Mr. Miller asserted that IDEM included the rate approval contingency because obviously without rate approval, Granger Water could not legally charge for water utility service. He noted that IDEM specifically stated in the WSMP approval letter that Granger Water's "demonstration of capacity is approved[.]" Mr. Miller testified that he interprets this statement to mean simply that Granger Water needed to petition the Commission for rate approval and not that the Commission would undertake a plenary review of Granger Water's WSMP, as Mr. Parks attempts to encourage the Commission to do. Mr. Miller testified that his analysis is supported by the fact that the WSMP is an IDEM requirement and not a Commission requirement. He opined IDEM implicitly believes that the rate approval function was a check the box type of process and is not a step that could prove fatal to Granger Water given that IDEM issued construction permits for the water plant and the distribution system serving phase 1 of The Hills. Mr. Miller also testified that Mr. Parks is far outside his lane and barking up the wrong regulatory tree regarding Mr. Park's criticisms of Granger's compliance with the WSMP requirements.

In response to Mr. Parks' claim that Granger Water decided to create its own water utility early in the process, Mr. Miller testified that this is immaterial. He testified even if Mr. Parks is correct, IDEM would still have needed to review and approve the WSMP. Next, Mr. Miller maintained that Mr. Parks engages in semantics by claiming that Granger Water did not notify surrounding water systems. Mr. Miller asserted that Mr. Parks tries to use entity formation and subdivision planning as a conduit to the notification required under the WSMP requirements. Mr. Miller opined that aside from the fact that IDEM has already favorably determined this issue for Granger Water, no rule or regulation requires notice to surrounding systems before an entity is formed or planning has begun. Rather, the WSMP notice requirements apply when the formal WSMP process begins. Regardless, Mr. Miller pointed out that IDEM has already approved the aspects of the WSMP about that Mr. Parks comments about.

Mr. Miller responded to Mr. Parks criticisms of Granger Water's actual notice to surrounding water supply systems. He testified that this is another example of Mr. Parks being outside his regulatory lane. He states that a notice is exactly that, a notice. Mr. Parks may have preferred a customized form of notice, that is not the legal requirement. He testified that making a request for a main extension is not part of the IDEM capacity rule. Mr. Miller testified that, while Mr. Parks complains that Granger Water did not request a main extension request from another utility, making a formal main extension request is not required. Representatives of Granger Water met with Mishawaka and determined that a main extension was not feasible. Mr. Miller testified that, it is his belief, Mishawaka cannot be compelled to extend a main to The Hills.

In response to Mr. Parks' testimony that Mishawaka has water customers outside its corporate limits, Mr. Miller testified that Mishawaka has extended service outside its boundaries toward The Hills for fire protection only. Specifically, he stated that Cobblestone Square, a development closer to Mishawaka than The Hills, requested to connect into this system but ultimately did not connect. Mr. Miller did not explain the reason the other development did not connect. Mr. Miller opined if Mishawaka was truly interested in serving The Hills, it would have extended mains to closer developments already and concluded Mr. Parks' testimony is based on a flawed assumption that Mishawaka extending a water main to The Hills is a feasible solution. The fact that Mishawaka is unwilling and unable to serve should put an end to this discussion.

Mr. Miller opined that "the fact that Mishawaka is unwilling and unable to serve should put an end to this discussion." *Id.* at 10. Mr. Miller then testified to rebut Mr. Parks' main extension estimate which he asserted was faulty. Mr. Miller stated that Mr. Parks holds out an off-the-cuff price quote gleaned from a telephone conversation with the utility using its alleged cost with no engineering support for the main in question. Mr. Miller testified that the figures Mr. Parks cites are not reflective of the cost a developer would incur, such as title research, topographic surveying, engineering design, permitting, easements, utility relocations, pavement removal/replacement, future expansion planning and individual service connections, and legal representation services in preparing necessary agreements and/or contracts between any and all interested/impacted entities. Mr. Miller also testified that using easements or public rights-of-way to extend service is a big issue. Mr. Miller testified that this process is more difficult and expensive than Mr. Parks simplified main extension estimate assumes. Mr. Miller also testified that the limited rights-of-way width available "behind" a paved road in St. Joseph County would be taken up by other utilities and providing a water main a safe, unobstructed "lane" would surely require at least a lane of paved road to be removed. He further testified that additional work would be needed at each intersection. This could entail replacing/upgrading the intersection to current design standards. Mr. Miller also testified that the timeline Mr. Parks proposed was unrealistic and getting approval "up and down the government ladder" would entail a timeline far exceeding the one assumed by Mr. Parks. Mr. Miller also testified that political will is lacking, and this demonstrates that the main extension proposed by Mr. Parks is an exercise in futility.

Mr. Miller testified that the Juday Creek Water Plant expansion Mr. Parks mentioned is irrelevant to The Hills. Mishawaka has already indicated it is not willing to serve The Hills, and Mishawaka cannot be compelled to serve. The future existence of that plant is immaterial and irrelevant to this proceeding.

As to Mr. Parks' criticism of the life cycle cost analysis performed by Granger Water as part of the WSMP, Mr. Miller testified that Mr. Parks is outside his regulatory lane, and that IDEM has already approved the WSMP, including the cost benefit analysis. Moreover, Mr. Parks interchanges "life cycle cost analysis" with the requirement for a "cost benefit analysis" under the IDEM Capacity Rule. Mr. Miller testified that he signed off on the cost benefit analysis prepared by Mr. Matthews, meaning that he reviewed it and it was completed under his ultimate supervision.

Mr. Miller testified that he has no reason to believe Granger Water's system does not conform to the Ten States Standards mentioned by Mr. Parks. The system was designed using development standards for local and state jurisdictions and all relevant construction permits were

received. Moreover, IDEM has already reviewed the plans and specifications for the system and permitted the plans and specifications for the system.

As to Mr. Parks' comments regarding compliance with the St. Joseph County Subdivision Control Ordinance, Mr. Miller testified that the Area Plan Commission has already approved the subdivision. The engineering feasibility study was prepared, and the ordinance satisfied, otherwise plat approval would not have been received.

Finally, Mr. Miller testified as to the events leading to the decision that the water system would be retained by Granger Water rather than contributed to the SJCRWSD. The SJCRWSD has only undertaken sewer projects to date involving areas beyond the reach of any nearby municipality for the expansion/extension of the municipal system. The SJCRWSD is a relatively new entity and provides a valuable resource for those areas where a more thoughtful development includes traditional municipal systems such as sanitary sewer collection and treatment, and water main systems. The SJCRWSD was engaged from the beginning with the development to seek the best possible way to serve The Hills. Open public meetings took place where the SJCRWSD reviewed the value of the system, the ability of the SJCRWSD as a simplified pass-through on the billing aspects, and the greater good that could be done with the options available to the area in question. The SJCRWSD relinquished any immediate opportunity to take on its first water main distribution system. Instead, after numerous discussions, the developer was given the go-ahead to pursue a private water plant and water utility for the defined area. The SJCRWSD maintains a nearby sanitary sewer collection system that was utilized for sewer purposes and The Hills connected into that sanitary sewer.

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

Ms. Wilson then addresses Ms. Sullivan's concern that all customers are added on the first day of the operating year. Ms. Wilson testified that, in Granger Water's case, the assumption of all new growth being present at the beginning of an operating year provides a clear expectation for what growth must be realized. It suggests that growth needs to be realized prior to the start of a year to achieve the projected results. Further, Ms. Wilson's analysis in Attachment JZW-1 does not correlate Year 1-10 to a specific calendar year, which means Granger Water will commence Year 1 at the time it hits 38 customers.

Ms. Wilson testified that the growth projections in the WSMP do not match those included in this Cause due to additional analysis being performed by Mr. Matthews based on changing market conditions.

As to Ms. Sullivan's testimony regarding a request for pre-approval of future rate increases using ARP, Ms. Wilson testified that Granger Water did not include such a request in its petition. Granger Water would submit all requests for rate increases under ARP in accordance with

Commission guidelines. Granger Water included increases under ARP in its projected financials because Granger Water uses expenses with inflationary increases in projecting its financials. It was prudent to match increased expenses with increased revenues to show the best match in future revenue requirements.

Ms. Wilson then testified on recording losses as a regulatory asset. The fact that Granger Water is a start-up utility makes it reasonable to record operating losses as a regulatory asset. Exorbitant rates would be required for Granger Water to recover its full revenue requirement and would stymie future customer growth for Granger Water. The owners of Granger Water are willing to charge an amount less than the rates that could be justified so as to not put undue burden on the first customers and deter future growth. In other words, the owners are willing to shoulder the risk and the loss anticipated in the first years of operation for the success of the utility in future years. By creating a regulatory asset, the owners will have the opportunity to present the regulatory asset for recovery in the future. This potential for recovery compensates the owners for undertaking the risk and loss at the start-up utility.

Ms. Wilson testified that an intergenerational inequity does 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 testified that Ms. Sullivan's interpretation of the risks and rewards of a start-up utility are not valid. Regulation results in a finite reward available through utility ownership, and Granger Water is merely asking the Commission to allow it to recover some of the benefit when the utility has reached a more mature customer base in order to recoup losses incurred during early years.

Ms. Wilson testified she include a gross-up factor on the Schedule of Allowable Net Operating Income to calculate the "Rate Increase Required" were the Petitioner to seek full recovery of its revenue requirements. Thus, if the Petitioner were to seek a full recovery, it would incur income taxes. While seeking full recovery is not the Petitioner's intention during the early years of the utility, federal and state taxes will be a consideration in future rate making of the utility. Ms. Wilson testified she agrees with the OUCC that that the Utility does not have need to collect a provision for income taxes on its proposed SDC charge during the initial years of growth since it is expected to experience a loss. Petitioner would seek to count the full \$1,750 as a system development charge.

Ms. Wilson then testified Granger Water would evaluate the legislation and use accounting treatment that would result in the most favorable income tax outcomes for its owners and rate payers. If (1) legislation passes that exempts contributions in aid of construction ("CIAC"), such as Granger Water's proposed system development charges, from taxable income; and (2) the regulations governing CIAC allow CIAC to be used to reimburse prior capital expenditures, Granger Water requests that it be afforded such treatment.

Ms. Wilson then testified that the Commission has approved other utilities reimbursing itself for prior capital expenditures from SDCs, specifically Cause No. 43435. The Commission made this determination at the request of HSE because at the time of the Order in Cause No. 43435, for tax purposes, the Commission's approval was required under 26 C.F.R. § 1.118-2(b)(4) so that HSE wouldn't be required to pay taxes on the receipt of CIAC if used as a reimbursement for capital expenditures already placed in service. Because of changes in the law due to the Tax Cuts

and Jobs Act, Granger Water is currently required to pay tax on CIAC. To the extent that the tax law changes as a result of the Infrastructure Bill, Granger Water requests such a determination. Granger Water requests to use system development charges, which the utility will books as CIAC, as a reimbursement of the funds originally expended to construct the plant, if the tax law is changed to allow such treatment and such determination is required.

Ms. Wilson then testified that Ms. Sullivan is incorrect in her statement that if SDCs are used to pay operating expenses they must also be counted as revenue. The use of a receipt does not determine its accounting treatment. Ms. Wilson also testified that Ms. Sullivan improperly characterized Granger Water's request related to SDCs. Ms. Sullivan states that Granger Water requested Commission approval to treat SDCs as operating revenue, which is incorrect. Granger Water requested approval to the extent that the Commission requires such approval to use SDCs to pay for operating expenses.

Ms. Wilson testified that counting system development charges as reimbursements effectively realigns the capital structure to be split between debt, equity, and CIAC, rather than just debt and equity, while allowing system development charges cash to pay operating expenses reduces any required equity contributions, thus having the same effect on Granger Water's capital structure. Since Granger Water is reducing its rate base as it collects system development charges (either through reimbursement or foregone capital contributions), it is reasonable for Granger Water to use those funds as it sees fit. By applying the system development charges as a reimbursement of capital expenditures already made should the tax law allow it, Granger Water would not be required to maintain the cash collected from the system development charges in a restricted account. Likewise, if Granger Water wants to apply system development charge funds to cash flow operating expenses in early years of operations, it reduces the required equity contributions required by the owners of Granger Water. The capital-intensive nature of water utilities as well as high fixed costs create high barriers of entry to starting a utility, which in turn prevents rural customers from receiving water service from a public utility. The mechanism of treating system development charges as a reimbursement of prior capital outlays or to be used for operating expenses enables owners of start-up utilities to better manage cashflow during the initial lean operating revenue years.

Ms. Wilson testified Granger Water has presented a model that mitigates as much risk as possible: the model (1) achieves positive cashflow within five years even by the OUCC's model; (2) eliminates debt quickly, which is a source of significant risk for smaller utilities; and (3) is based on reasonable growth rate projections according to those with the best knowledge of the local real estate market (i.e., Mr. Matthews and Mr. Smith).

Ms. Wilson testified the Commission's main extension rules for water utilities, 170 IAC 6-1.5, address circumstances in which an applicant requests extension of water service. The rules are intended as a protection for the applicant and the utility in mediating extension of service. This administrative code provision should not be imposed on Granger Water due to its shared relationship with Village Development. Allowing Granger Water to purchase distribution system assets instead of receiving them as a contribution enables the Petitioner to incur less tax liability under the current tax law that would only add to operating losses. That the Petitioner will not include distribution assets in its rate base neutralizes this effect on rate payers when a return on investment can be included in the revenue requirements. Ms. Wilson notes, that if the Infrastructure

Bill is passed and enables Village Development to donate distribution system assets to Granger Water without a tax effect, Granger Water would then donate the distribution system. Again, the distribution system loan is solely a tax avoidance strategy that benefits both rate payers and owners of Granger Water

Ms. Wilson testified on March 17, 2021, the Commission approved Wells Homeowners Association, Inc. to charge flat rates to its customers in Cause 45440 U. The Manual M1 discusses the merits of a flat-rate structure, particularly in the context of a start-up utility. The Manual M1 states on page 149, “One of the more common means of stabilizing revenues from water rates is increasing the portion of rate revenue recovered by fixed charges...” Predictability of revenues is a reasonable basis for a flat rate structure, particularly with Granger Water’s willingness to install meters when the customer base is more established. This also does not saddle the utility with unneeded infrastructure costs in the early years and recognizes that once the utility becomes more mature, the meters can be installed and not have their useful life “wasted” during the period when revenue stability was at its peak importance.

Ms. Wilson testified regarding the distribution system loan that Ms. Sullivan did not characterize Granger Water’s response to discovery correctly, and that Granger is certain that it will not include distribution system assets in calculating its rate base. Ms. Wilson made this same point in relation to Mr. Dellinger’s calculation of future rates, that Granger Water has agreed to forego including the distribution system in rate base.

Ms. Wilson then testified that while the water treatment plant loan does have a maturity date of March 31, 2024, Granger Water anticipates that the terms of the loan may be extended beyond March 31, 2024, pending results of development. Were development to not proceed according to lending bank’s expectations, the loan would be renegotiated to a principal and interest loan over a longer period of time. This is a typical financing arrangement in the commercial lending environment as banks typically want a performing loan rather than acquisition of the underlying assets.

Ms. Wilson testified that Ms. Sullivan doesn’t recognize the relationship between customer growth assumptions and owner contributions, which is a key factor in evaluating the financial viability of Granger Water. Ms. Sullivan points to the \$5.1 million of owner contributions over the next 10 years but does not recognize the nuance that such contributions are either predicated on reasonable assumptions or not required unless customer growth is realized. Owner contributions consist of (1) initial cash contributions, (2) curtailments from lot sales, (3) capital reserve contributions, and (4) distribution system loan contributions. Initial cash contributions have already been made, and therefore, are not relevant to the financial viability of Granger Water. Regarding (2), Ms. Sullivan correctly states that curtailment amounts from lot sales totaling \$9,259 will be contributed to Granger Water for each lot sold for the purpose of repaying the treatment plant loan. Given an interest reserve was funded through proceeds of the loan, only 160 lots need to be sold to repay the loan. Granger Water anticipates extending the terms of the water treatment loan beyond the March 31, 2024, maturity date, or converting to a principal and interest loan with a longer term if the situation requires. In either case, Granger Water is not dependent on full build-out of its design capacity to repay the treatment plant loan. Hypothetically, were the customer growth assumptions not realized, Granger Water would cease to expand the distribution system until necessary, which would decrease the required owner contributions to Granger Water.

Ms. Wilson testified that Granger Water is not seeking to collect a return on investment in the initial years of operation. Therefore, the weighted average cost of capital is not relevant to the ratepayers in the projection period shown in Attachment JZW-1. In fact, if Granger Water were to extend the terms of the debt as proposed by Mr. Dellinger, this would result in an additional interest cost burden to the owners that would at some point be transitioned to the ratepayers at the time Granger Water implements fully allowable rates. Ms. Wilson testified that Granger Water did not intend to propose a capital structure for the next 10 years of operation in its filing; rather, the intention was to project 10 years of operating results based on proposed rates and certain assumptions outlined within Attachment JZW-1. Mr. Dellinger proposed funding the plant expansion with debt rather than equity, which Granger Water would certainly consider as an option and would request Commission approval as necessary as the utility grows.

Ms. Wilson then testified that Lifecycle Cost Analysis presumes ownership of the alternatives under consideration. As the Corporate Finance Institute summarizes it, “[Life Cycle Costs Analysis] considers all costs associated with obtaining, owning, and disposing of an investment.” Mr. Dellinger is not comparing two options that contemplate ownership, but rather compares (Option 1) operation of a water utility, owned by Granger Water, to (Option 2) construction of a main connection that is donated to Mishawaka. Ms. Wilson testified that this flaw in Mr. Dellinger’s analysis allows Mr. Dellinger to incorporate all the costs of operating, maintaining, and improving the system in Option 1 with just the construction price of Option 2. Accordingly, Mr. Dellinger’s analysis compares apples to oranges and results in a fatally flawed conclusion.

Ms. Wilson then testified inflationary increases may be appropriate for projecting future expenses of operation and maintenance, but capital requirements of a utility can often impose the largest changes in rates through funding of extensions and replacements or debt service for capital projects. In response to Data Request 1-7 (which asked “Did the OUCC consider the City of Mishawaka’s capital improvement plan in its assessment of rates in the next 10 years? If yes, please provide a copy of the plan.”) the OUCC responded in part that it “did not obtain or review Mishawaka’s capital improvement plan.” Review of that plan should have been performed in any reasonable analysis of future rates. Punctuating the OUCC’s oversight, Mishawaka has already passed by ordinance in December 2020, two water rate increases of 16% and 23% taking effect January 1, 2022, and January 1, 2023, respectively. The OUCC stated, also in response to Data Request 1-7, that “Subsequent to filing the OUCC’s case, the OUCC determined that phase rate increases are scheduled by Mishawaka for 2022 and 2023,” but has not sought to correct its faulty analysis. The two rate increases enacted by Mishawaka in late 2020 alone nearly eclipse the estimated 2031 Mishawaka rate calculated by Mr. Dellinger, let alone the increases that may occur in the projection period due to the Mishawaka’s capital needs. Accordingly, the Commission should reject Mr. Dellinger’s projected rate comparison.

Ms. Wilson then testified that Granger Water has presented cost justified non-recurring charges. Ms. Wilson testified that while Ms. Sullivan may not agree with the \$100 per incident support for Office Overhead and Billing (CFS-17), providing a recommendation to disallow non-recurring charges neglects to allow for the expenses that would be incurred by Granger Water from Teachers Credit Union for a return check fee of \$32 or the charge from RB Trucking and Towing for their hourly fees for a service call (\$135 during business hours or \$405 during holiday or

weekend hours). As to the late payment charge, Ms. Wilson pointed out that Ms. Sullivan is silent as to her justification in opposition to it.

In reducing the number of issues in contention in this Cause, Granger Water is willing to propose the following as the non-recurring charges:

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

Service Call (After Hours/Holiday): \$430.00

Bad Check Charge: \$57.00

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

Finally, Ms. Wilson summarized that Granger Water has presented reasonable customer growth projections, has demonstrated that a regulatory asset should be created, has presented reasonable and Commission-approved manner of accounting for system development charges from a tax and operations perspective, has justified implementation of a flat rate, has demonstrated it distribution system loan and water plant loan are reasonable and in the public interest, has supported its financial ability and proposed capital structure, has demonstrated that the OUCC's lifecycle cost analysis and Mishawaka rate comparison are each flawed and inappropriate to consider, and has presented cost justified non-recurring charges that should be approved.

7. Commission Discussion and Findings. Petitioner's various requests for regulatory authority raise many issues that touch upon the Commission's role as a gatekeeper and protector of the public as consumers of utility services. Indeed, we must view each of these applications separately applying the principles the Indiana General Assembly authorized us to employ.

A. Regionalization. We have construed IC 8-1-2-0.5 to create a policy that favors regionalization of water utility operations and protecting affordability of water service. Petitioner's decision to borrow money and construct its own water treatment facilities in lieu of pursuing a connection to the City of Mishawaka does not further this policy. Moreover, the efforts by Granger's owners to explore connecting the Hills to Mishawaka's system was lackluster and perfunctory.

In Cause No. 45274, we acknowledged the Town of Lizton's desire to provide its citizens with municipal water service and promote local economic development. But with fewer than 200 customers, we expressed our concern that Lizton would be essentially creating a "distressed utility" (now "offered utility" under IC 8-1-30.3) because its water system will be too small to capture economies of scale and will serve less than 5,000 customers. Lizton, Final Order Cause No. 45274 p. 6. We added that the General Assembly articulated a policy to promote regionalization of utility service in order to maximize efficiency and economies of scale and protect affordability of utility services. See, e.g., Ind. Code§ 8-1-2-0.5. While we conditionally authorized Lizton to proceed, we nonetheless expressed our belief that what Lizton sought contravened that policy. Providing water service is extremely capital intensive, and the risk in Lizton's investment is so great that it may result in customer rates that far exceed those it has proposed, ultimately hampering economic development. Id.

Notwithstanding some differences (i.e., Petitioner would be a for-profit public utility and would be providing service to new homeowners as opposed to existing homeowners previously relying on well water) we have the same concerns in this case and others that did not arise in our review of Lizton's application. For instance, Lizton did not ask us to allow it to recover at some future date from its customers an unspecified amount for the operating losses it expects to incur. Such a request is unusual and while we have from time-to-time permitted recovery of expenditures, those circumstances and factors should be considered extraordinary, compelling and transparent. In this case, deferred accounting is simply it seems part of Petitioner's business plan, calling for it to operate at a loss, presumably until its affiliate has sold enough of its lots, and then look to its customers to make the utility whole.

Also, the Town of Lizton's operations as a water utility promised to be distinct. We were not concerned or required to address, as we are called upon to address in this case, a lack of distinction between Granger's owners as operators of a utility and the same individuals as owners of the development to be served by Petitioner. This lack of distinction manifested itself in the encumbering of the utility's assets for debt incurred by an affiliate. Further, the Town of Lizton did not ask us to authorize a borrowing after-the-fact.

But even without these factors (i.e., if there was no cross-collateralization, if the Granger Water had not borrowed without Commission authority, and if Petitioner's plan did not require it to recover in the future losses it would incur in the next several years), we must still address whether it is in the public interest for Granger Water to become a public water utility in this state as opposed to a more regional solution.

In its proposed order, Petitioner asked us to find that the evidence of record established that regionalization (i.e., connecting to the City of Mishawaka's water service) was not a feasible option. We decline to make such a finding.

In its proposed order, Petitioner argued that the only direct evidence of Mishawaka's interest in serving the Hills was the "no interest" letter it marked and returned and a June 4, 2020 email from Mishawaka stating it "does not have the infrastructure or any plans in the near future to run water main (sic) to the area in question." We don't agree that is the only evidence on the subject or that it supports Mr. Matthew's conclusion that regional approach to water utility service was not available. First, the so-called "no interest" letter did not state Mishawaka was unable to allow a connection to its water system. The May 29, 2020 letter Granger Water sent and asked Mishawaka to check announces Granger has already contracted Peerless Midwest to develop a drinking water system supply system for the Hills, explains that it has sent the letter because it is required to do so by the Indiana Administrative Code, and ends by asking Mishawaka to indicate with a yes or no whether it is "interested in assisting with the facilities (sic) potable water supply." Attachment JPM-6, p. 76 of 91. Nothing in that letter indicates Granger is asking for the City of Mishawaka to allow the developer of the Hill's to connect to Mishawaka's water supply. In fact, the record shows no such formal request was ever made. (Public's 's Exhibit No. 3, p. 25)

Likewise, the June 4, 2020 email from Mishawaka (included in OUCC CX-4) does not establish Mishawaka was unwilling to permit the Hills to connect to its system. The statement that "Mishawaka does not have the infrastructure or any plans in the near future to run water main to

the area in question,” must be understood in the context of the May 29, 2020 letter Petitioner sent. Neither the Hills nor Granger Water has ever requested a main extension or main extension cost estimate. Yet the City expressed a desire to explore connecting the Hills to its system within two months of that email. The following month, in a July 22, 2020 email, the City indicated it “would like to discuss the potential of supplying Mishawaka Utilities’ water to the Hills at St. Joe Farms.” That meeting was held on August 5, 2020. Mr. Parks testified that Mr. Majewski of the City of Mishawaka indicated Mishawaka was prepared in August 2020 to have their water system consultant, DLZ engineers, study how best to serve the subdivision and develop main extension costs. Mr. Majewski indicated Mr. Matthews did not appear to be interested, possibly due to the subdivision schedule. (Public’s Exhibit No. 3, p. 25) Mr. Parks indicated Mr. Majewski explained Mishawaka and not Petitioner had requested the meeting because the City was willing to serve the subdivision and realized there was a need to develop project details including demand volumes, main sizing, possible tie in points, water main route options, and cost information. Public’s Exhibit No. 3, pp. 24-25.

After the OUCC filed its case, Mr. Matthews sent an October 24, 2021 email to Mishawaka’s Mayor Wood, asking for a letter “confirming the City’s position on extending water service to The Hills at St. Joe Farm Subdivision.” OUCC’s CX-4. But Mayor Wood’s response did not support Mr. Matthews’ suggestion. Mayor Wood responded with an email in which he declined to endorse a draft letter Mr. Matthews had provided, and which presumably indicated the City was not interested in serving the Hills. Mayor Wood’s response noted Mishawaka had offered to allow a draft study to be done to explore possible connection from 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 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 if a study concluded it was feasible, infrastructure was built to City standards and the developers of the Hill or some other entity funded infrastructure extension to the development.

OUCC CX-4.

Although the draft letter Petitioner sent is not in evidence, Mayor Wood’s email indicated it included statements about the Cobblestone development and the City’s apparent unwillingness to provide service northwest of the City. Mayor Wood explained that was not the reason that service by MU was denied to the development. Mayor Wood noted that the developers of Cobblestone approached the City several years ago and requested to connect to the City’s water system and agreed to do a study. Mayor Wood explained that while MU was initially open to extending water service to that development, it was ultimately determined (based on the completed study) that due to the location, elevation and size of the development, the city’s system could not handle the pressure needed to service growth outside the City in that location at that time so it was denied. Further, Mayor Wood explained that extending service there could have compromised

service and water pressure to our existing customers in the University Park Pressure District including to critical users such as hospitals and medical service providers: However, Mayor Wood explained those constraints no longer exist:

That issue is currently being remedied now with the construction of the City's largest water tank on Gumwood, the construction of new Juday Creek Water filtration plant and the Juday Creek Wellfield. Once these three projects are complete in the coming months, MU will be able to service growth in and around Mishawaka with unlimited, clean, safe potable drinking water with outstanding pressure for the very long term at a great value to our customers.

OUCC's CX-4.

Petitioner asked us to “recognize that our preference for regional approaches does not preclude other options, particularly in context of existing utilities not being under any compulsion to serve prospective areas desiring water service.” Petitioner’s proposed order, p 31. Such a finding implies the City of Mishawaka is unwilling to provide service to the Hills, and as the evidence described above shows, such a conclusion is unwarranted. Nor do we accept the proposed finding that a reasonable approach is not feasible.¹⁷

Petitioner would have us find that “Where regional approaches prove infeasible, the State allows for new water utilities to be formed.” The standard Petitioner has proposed also calls for the corollary – “Where a reasonable approach is feasible, a new water utility should not be authorized by the Commission.” However, in any case, the evidence does not support a conclusion that a regional approach is not feasible. In fact, if the evidence supports any conclusion, it is that a reasonable approach is not only feasible, but also the only approach that does not require retro-active recovery of operating losses, and unusually high non-recurring charges, such as those Petitioner has requested be authorized.

The evidence of record supports a regional approach, but even for sake of argument it had not, the evidence does not support a finding that a regional approach is not feasible. Moreover, we take this opportunity to articulate that as the petitioner for the relief requested, it is the prospective utility that has the burden to show its application and requested relief is in the public interest. Consequently, it was Petitioner’s burden to show the “regional approach” is not feasible. Clearly, Petitioner has not met this burden.

Petitioner has never formally requested a main extension from the City of Mishawaka or taken the steps necessary to make such a request. Petitioner never obtained a cost to connect from any existing water utility. Petitioner’s “no interest” letter appears to be document designed to elicit exactly what it received, agreement that the City was not “interested in assisting with the facilities (sic) potable water supply” that Petitioner declared it was building. Attachment JPM-6, p. 76 of 91. Yet, within weeks of returning the “no interest” letter, Mishawaka initiated a meeting with

¹⁷ Petitioner recommends we find “Where regional approaches prove infeasible, the State allows for new water utilities to be formed.”

Petitioner to develop project details including demand volumes, main sizing, possible tie in points, water main route options, and cost information. Public's Exhibit No. 3, pp. 24-25. But as Mayor Wood pointed out, Petitioner rejected a City requested study to explore possible connection to Mishawaka's water system. OUCC CX-4.

While Mr. Miller certified Petitioner's Cost Benefit Analysis and IDEM accepted Mr. Miller's certification without comment, that does not prevent this Commission from independently reviewing whether the Cost Benefit Analysis supports Petitioner's conclusion that the formation of a new water utility is the most cost-effective solution, that it conforms with regulations and is reasonable and prudent. Nor does it preclude us from considering the quality of such analysis in performing this Commission's role as the economic regulator of utilities. In fact, Mr. Miller acknowledged at the hearing the Commission is not precluded from reviewing the information submitted to IDEM. Hr. Tr. B-15, lines 5-12. We need not delve directly into whether Petitioner's analysis and Mr. Miller's certification have in fact met the WSMP requirements. We do not review IDEM's decision to rely on Mr. Miller's certification or argue in this proceeding that IDEM's acceptance of the WSMP should be set aside. But we may nonetheless explore and consider Petitioner's Cost Benefit Analysis shortcomings in light of the evidence provided by the OUCC. The OUCC identified errors in Petitioner's Cost Benefit Analysis including Petitioner's omission of expansion, replacement, and operating and maintenance costs in analyzing Petitioner's preferred new treatment plant option and overstatement of costs to connect to Mishawaka's water system via a main extension. Mr. Parks alerted us to the fact that the Cost Benefit Analysis was not prepared by a Professional Engineer or a qualified person under the direct supervision of a Professional Engineer, as required. Rather, it was prepared by the developer and Granger Water owner Mr. Matthews and merely signed off by Mr. Miller's certification.

Petitioner's analysis did not incorporate all the factors to be considered in a life cycle cost analysis. In particular, as the OUCC's Mr. Dellinger testified, the analysis did not recognize the significant operation and maintenance costs associated with Granger Water operating its own water plant installation, costs of maintaining the plant, and interacting with customers. Nor did the analysis account for capital costs Petitioner estimates it will incur in the near term to expand the plant.¹⁸ Further, we agree with the OUCC that the estimated costs of connecting to the City's system were unsupported and overstated. On the other hand, the OUCC provided substantial support for Mr. Parks' estimated extension costs through testimony and workpapers of the Mishawaka main extension costs.

Petitioner's analysis was also flawed with respect to what it would need to construct and incur in the next several years. Regarding the capacity of Petitioner's source of supply (wells), water treatment plant, two hydropneumatic storage tanks and distribution system, based on our review of the evidence, these assets were permitted by IDEM for the initial 40 homes in Section 1. Petitioner's two hydropneumatic tanks are acceptable in the initial stages of development when customers are few but in accordance with Mr. Parks' testimony, they will be inadequate when The Hills exceeds 114 customers. We agree that Indiana regulations pertaining to hydropneumatic tanks, Ten States Standards and IDEM limit use of such tanks only to very small systems and prohibit their use for fire protection. The OUCC recommended we direct Petitioner to construct either an elevated or ground storage tank for finished water storage as development progresses

¹⁸ *Id.* at pp. 8-10.

instead of Petitioner's proposed addition of another hydropneumatic tank and three additional filters in Year 7. We agree with the OUCC that an additional hydropneumatic tank and filters would not be appropriate. Accordingly, absent a connection to Mishawaka Petitioner would need to expand its water system with additional storage at significant cost.

Based on the evidence presented, including what Petitioner asserted is the only evidence on the issue, we find Petitioner had not earnestly pursued connecting to the City of Mishawaka's water system. In fact, the evidence supports the City's willingness and ability to connect its system and supply water service to the Hills. Mayor Wood made this clear in his October 26, 2021 email to Mr. Matthews. Accordingly, we find Petitioner should see that its affiliate developer formally requests from the City of Mishawaka a main extension and the required cost of such extension at an appropriate connection point and in accordance with the Commission's applicable main extension rules.

B. Certificate of Public Convenience and Necessity. Beginning with its petition, Granger asked the Commission to grant it a certificate of public convenience and necessity. But in its proposed order, Petitioner's asks the Commission to declare it has no real authority to issue a certificate of convenience and necessity.¹⁹ Nonetheless, Petitioner asks the Commission to grant it "a certificate of public convenience and necessity over the 151-acre service area proposed by Petitioner." Petitioner asks for the further explanatory finding that the "certificate of public convenience and necessity issued by this Order is not granted as an authorization to provide service, but rather as evidence of the area in which Petitioner will be required to provide service." Finally, Petitioner asks the Commission to find that it "shall not be required to serve outside its certificated area." Petitioner's proposed order, pp. 31-32.

Thus, Petitioner proposes the Commission (1) issue a certificate Petitioner says the Commission has no authority to grant, (2) establish exclusive territory for a water service, and (3) rule in advance of any case or controversy whether it must allow customers outside that service territory to connect.

We will address each of these requests separately, beginning first with Petitioner's request to establish exclusive territory for a water service. To that end, there is no statutory authorization for the Commission to grant exclusive territories to start up water utilities. In its petition, Granger Water said it "considers Ind. Code §§ 8-1-2-4, -6, -7, -10, -39 - 61, -61.5, and -71, and -83, among other statutes, to be applicable to the relief requested by this Petition." None of these statutes by their terms authorize the Commission to grant exclusive territories to water utilities. Petitioner has not identified any other statutes that would authorize our granting an exclusive territory for water service to Petitioner or any other for-profit public utility. Accordingly, we decline to issue any findings that may suggest Granger Water has an exclusive right to serve in the 151 acres it identified in its exhibit.

¹⁹ Petitioner asks the Commission to find the following: "We do not debate the General Assembly's policy choices in this regard but simply note that if the General Assembly desired that water utilities receive a certificate of public convenience and necessity or a certificate of territorial authority as a precedent to operation, it would have enacted legislation requiring such a certificate."

While we may recognize the area or areas likely to be served by public utilities under our jurisdiction, we do not actually grant exclusive rights to serve. Petitioner's affiliate is the developer of half of the identified area and consequently it seems likely that if we confer on Granger water the authority it needs to lawfully provide water service in Indiana, it seems likely that the parcels owned by Petitioner's affiliate developer will be served by Petitioner. The remaining half of the area identified by Petitioner's request is another matter. Petitioner's affiliate merely possesses a right of first refusal on that real property. Consequently, there is no evidence there is an interest in that area of receiving service. In any case, the Commission does not authorize exclusive service areas for water utilities.

As to Petitioner's request that we establish it has no obligation to serve outside the 151 acres identified, we also decline.²⁰ First, such a finding runs counter to the premise that public utility water providers do not operate within predetermined territories. Moreover, it is inappropriate for the Commission to pre-determine where Petitioner need not extend service to applicants for service. For instance, a prospective customer's request for service met by a denial may require the Commission to resolve that matter. We need not make any determination at this time about the Commission's jurisdiction to settle any such dispute. Moreover, what petitioner has requested in this regard would appear to be a declaratory judgment, which this Commission does not issue and which it is not authorized by the Indiana General Assembly to issue.

Finally, we address Petitioner's suggestion that the Commission does not really issue certificates of public convenience and necessity to water utilities. The OUCC made no statement in its case as to whether a Certificate of Public Convenience and Necessity is something the Commission is authorized by statute to grant. Beginning with its petition, Granger asked the Commission to grant the certificate and only questioned whether the Commission was authorized to determine whether such a certificate should be granted after the OUCC filed its case.²¹ We begin by noting the logical inconsistency in Petitioner's requests and its explanations for those requests. It makes no sense that the Commission lacks the authority to issue a certificate of public convenience and necessity but has the authority to issue such certificates to create service territories.

Petitioner made it clear in its proposed order that it requested a certificate of public convenience and necessity for purposes of limiting the territorial area it would be deemed to serve. Petitioner's proposed order, pp. 31-32. Having found that we do not grant public utilities exclusive water territories or predetermine how a disputed request for connection should be resolved, according to Petitioner we need not grant it a certificate of public convenience and necessity as a requirement or prerequisite of its providing water service. In fact, Petitioner has us find that "If

²⁰ According to Petitioner's proposed order, "Granger Water requested a certificate so that it is only deemed to be holding itself out as providing water service within its proposed 151 acre service area" Granger Water added it "wants only to be required to provide service to the 151 acre area during its initial start-up phase so it can focus on getting up and running and building its customer base before it looks to expand beyond its initial 151 acre proposed service territory."

²¹ 4. Certificate of Public Convenience and Necessity. Granger Water will serve the first new subdivision provided water and sewer service in unincorporated St. Joseph County in nearly 20 years. A map of the proposed area is attached to this Petition as Exhibit A. Granger Water requests a certificate of public convenience and necessity covering such area.

we denied the issuance of a certificate of public convenience and necessity, Petitioner would still be within its rights to operate because the statutory scheme for water utility regulation does not prohibit Petitioner's operation without a certificate of public convenience and necessity." Petitioner's proposed order, p. 32-33.

If a certificate of public convenience and necessity is required, presumably Petitioner's argument would be that we are powerless not to issue one because "other agencies have already performed their review, and it is not within our purview to review the decisions of those other agencies." Petitioner's proposed order, p. 32. Petitioner noted that "IDEM specifically determined that Petitioner met the requirements of the managerial and technical capacity requirements of the WSMP Rule, which include notice to surrounding systems and a cost benefit analysis concerning connection to surrounding systems." *Id.*

Petitioner compounds its misinterpretation of the regulatory terrain by misunderstanding the OUCC's arguments as suggesting the IURC should exercise jurisdiction over IDEM. The OUCC has never in this case asserted that the IURC supervises IDEM's process or has the authority to overrule IDEM's findings. But contrary to Petitioner's proposed findings, IDEM did leave capacity approval open to commission review by making the approval contingent on the Commission's ratemaking function. IDEM recognized the Commission's role as the economic regulator of providers of water service by making its demonstration of capacity contingent on findings being addressed during the application process. OUCC Attachment JTP-1, p. 2 of 8. And while it found the demonstration of capacity was approved in order to allow Granger to move on to the rate approval process, its "ability to be activated as a community public water supply in Indiana is still contingent upon [Granger] obtaining rate approval from the IURC." *Id.*

Thus worded, IDEM's certification letter acknowledges that whether Granger is activated depends on the Commission determining not only what rates should be but whether rates should be approved at all.

Petitioner argues that "the statutory scheme enacted by the Indiana General Assembly does not require certificates of public convenience and necessity to provide service, and if we denied issuing the certificate, Petitioner would still be within its rights to operate because the statutory scheme for water utility regulation does not prohibit Petitioner's operation without a certificate of public convenience and necessity.

Thus, Petitioner asks for a certificate, says such certificates are not authorized by law, says they are not truly necessary, and then requests we issue one nonetheless to limit its obligations to connect new customers, and that such reasons "*dictates* that such a certificate be granted." (emphasis added.) Petitioner's proposed order, p. 33. Alternatively, Petitioner argues, quite illogically, that we have the authority to grant a certificate of public convenience and necessity but lack the power to deny one.

The real question posed is whether we have any authority to determine whether, or not, an entity should be permitted to operate as a public utility. That IDEM has issued construction permits, as Petitioner asserts, does not require us to authorize this public utility. We find that we have the authority to determine whether a new prospective for-profit provider of water utility

service should be authorized to operate in Indiana as a public utility. We do so, not primarily by issuing a certificate of public convenience and necessity, but by determining whether a prospective utility should be permitted to operate as a public utility. If so, the Commission establishes and approves its rates. IDEM acknowledged this role in its October 22, 2020 Demonstration of Capacity letter. Further, in its petition, Granger acknowledged this when requested we “issue a final order approving an initial schedule of rates and charges for water utility service rendered by Granger Water.” Petition, p. 5.

In determining whether Petitioner should be authorized to operate as a public utility and charge rates authorized by the Utility Regulatory Commission, we must look at Petitioner’s prospective operations and how that affects its rates. Petitioner proposes a monthly flat rate of \$75.00 for water service, which Petitioner acknowledged is not sufficient to enable Petitioner to pay all reasonable and necessary expenses of operation. Ms. Wilson, however, provided a financial model that Petitioner asserted demonstrated adequate cash flows for the operation of the utility. The OUCC pointed out that even with a rate that is not sufficient to meet its reasonable and necessary expenses, the rates from other nearby utilities are significantly lower. Petitioner responded to this fact by asserting that the Granger area has higher median income than the surrounding areas and that customers are moving into The Hills with their “eyes wide open as to utility rates.” Petitioner asserted that, in addition to making its income more stable, a benefit to the flat rate was avoidance of infrastructure costs for meters during the early stages of a utility’s life and that the useful life of meters would not be “wasted” during the utility’s initial years when revenue stability is of peak importance.

Petitioner’s proposed \$75 rate is significantly lower than what would be justified by Petitioner’s own projected costs at the conclusion of ten years. Where Petitioner asserts in its proposed order that customers are moving into The Hills with their eyes wide open as to utility rates, we see little evidence of this. Petitioner’s proposed order, p. 33. As of the date of the hearing, only one customer is actually receiving water service from Petitioner. Hr. Tr. A-13. Whether this customer has his or her eyes open to what Petitioner could justify as a lawful charge for water service, the evidence does not show. Petitioner’s witness, Mr. Smith, the co-owner and managing broker of Irish Realty, the exclusive seller of lots at the Hills, does not himself know what rates are likely to be in ten years or even that Granger will be operating at a loss. Hr. Tr. A-4 – 12. Consequently, we do not agree with Petitioner’s supposition that the customers understand the nuances of the regulatory treatment and the rates they may expect in the future if we were to approve Petitioner’s initial rates and authorize it to operate as a regulated monopoly providing water service. If their “eyes are wide open as to utility rates,” Petitioner has not presented them with the information to be fully informed of what they may expect. Consequently, were we to set rates, we would find a more appropriate rate to set would be a rate that more accurately reflects the rates needed to operate the utility at year ten. There is no time at which Petitioner projects a \$75 rate would be sufficient for it to meet its operating expenses and provide a return on and of its projected investment. Assuming it adds 38 customers per year and based it its projected expenses, in year ten Petitioner projects it would need a rate of approximately \$118 ($\$81.04 \times 145\% = \117.51). Attachment JZW-1 (corrected), p. 8 of 13. Until year ten, a \$118 rate would still be insufficient by Petitioner’s own reckoning. However, an initial rate based on this amount would send a more accurate (i.e., less inaccurate) pricing signal to Petitioner’s prospective customers.

(Of course, the OUCC disagreed with Petitioner's assumptions about customer growth resulting in its projected rates of roughly \$144.60 in year ten.) Public's Exhibit No. 2, p. 18, Table SD-2.

The OUCC maintained that Mr. Matthew's "cost benefit analysis" embedded in Petitioner's Water System Management Plan, which Petitioner submitted with its case, did not incorporate all the factors to be considered in a life cycle cost analysis. In particular, Mr. Dellinger testified that the analysis did not recognize the significant operation and maintenance costs associated with Granger Water operating its own water plant installation, costs of maintaining the plant, and interacting with customers nor did the analysis account for capital costs Petitioner estimates it will incur in the near term to expand the plant. Public's Exhibit No. 2, pp. 8-10.

Mr. Dellinger testified that a comprehensive life cycle cost analysis should consider all known and reasonably estimated costs and the year the costs will occur. Cost should be converted to present value. Public's Exhibit No. 2, p. 10. Mr. Dellinger testified that, including Granger Water'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 \$1,700,000, as Granger Water indicated, but is instead \$4,794,365. Based on a customer growth assumption of 24 customers per year (as used by OUCC witness Ms. Sullivan), as well as near term expansion costs provided by OUCC witness Mr. Parks, the life cycle cost is \$5,073,995. Public's Exhibit No. 2, p. 10.

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 compared to the estimated cost of \$5,017,816 found in Petitioners' testimony. He stated that these estimates show that the least cost option is a connection to Mishawaka, and that the ongoing costs alone of the new water treatment plant indicate that even treating the already incurred costs as a sunk cost indicate the most economical path going forward is to connect to Mishawaka. Public's Exhibit No. 2, p. 10.

Mr. Dellinger discussed the costs to ratepayers that would result from different scenarios of providing water service. He analyzed the monthly and annual rates of Mishawaka providing service compared to Petitioner providing service. Mr. Dellinger further included analysis of Petitioner providing service based on various assumptions such as purchasing the distribution system and including a regulatory asset. These total charges over ten years show that connecting to Mishawaka would result in \$4,971 of charges, Petitioner's case in chief results in \$9,433 of charges, whereas the allowable monthly charges per Petitioner's case is \$29,061 and per the OUCC accounting schedules this same total is \$36,205. Public's Exhibit No. 2, pp. 15-18.

There was much disagreement as to whether Petitioner should be expected to grow customers at a pace of 38 customers per year for the first five years or 24 customers, which the OUCC pointed out was the same pace Petitioner assumed in its Water System Management Plan. We need not determine which growth rate should be used. Ultimately, the choice of growth rate does not fundamentally alter our calculus. As Table SD-2 in Mr. Dellinger's testimony shows the cost to customers for essentially the same service would be much less if the Hills were to connect to Mishawaka as opposed to Petitioner's preferred approach under either customer growth projection. Moreover, if we accept Petitioner's estimated growth of 38 customers per year for the first five years, it will be even sooner that Granger water would need to address its water storage

capacity needs by constructing above ground storage, which Mr. Parks estimated would cost approximately \$1 million (\$1,080,000).

We conclude that it is premature to require us to consider the many disadvantages and actual costs associated with service by Petitioner at this time without Petitioner or at least its affiliate developer having pursued earnestly a connection to the City of Mishawaka. Having already begun to serve one customers and implicitly promising service to others, Petitioner would put the Commission in the position of depriving individuals of water service if it declines to agree that Petitioner should receive the many authorizations it has requested in this Cause. We have found Petitioner's owners should pursue as developers of the Hills procuring water service from the City of Mishawaka at great benefit to its prospective customers. Meanwhile, in the absence of authority to provide water at an approved rate, we expect Petitioner will do what it said it would do and continue to provide water service to those who purchased lots with the expectation of receiving water service.²²

C. Long-Term Debt & Encumbrance of Franchise, Works or System. Without first securing approval by this Commission to become a public utility and without approval by the Commission to enter into long-term debt as required by IC 8-1-2-76 through 80, Petitioner issued long-term debt and encumbered its system through a mortgage. Mr. Mathews acknowledged he closed on the debt knowing full well he lacked required Commission approval. Hr. Tr. D-28. Mr. Mathews asserted at the evidentiary hearing that by the time he learned of the requirement to seek Commission approval, he was already committed to issue the debt. Mr. Mathews testified that lenders, homebuyers, and other parties relied on his representations concerning timing of opening The Hills, and he had personally staked his reputation on opening The Hills on the timeline he had established.

Petitioner borrowed \$1,481,397 through a promissory note, which paid for roughly 75% of the costs of Petitioner's water treatment plant. The interest rate on the promissory note is 4.25%, and the note is due on March 31, 2024. Mr. Matthews asserted that with interest rates as low as they are, the debt issuance was a reasonable manner of financing the water treatment plant. Mr. Matthews asserted that, if the loan is not paid in full by March 31, 2024, it will be rolled over as the bank would want a performing loan rather than ownership of the water plant.

Although the amount borrowed by the utility was only \$1,482,397, the utility's assets are encumbered by a mortgage lien not to exceed \$7,270,000. As well as providing security for Granger's debt, Granger Water's assets are also being used as security or collateral for debt of Granger water's affiliated developer. Mr. Matthews explained in his rebuttal that banks desire as much security as possible for their loans and that Petitioner's lender in particular viewed The Hills development and Granger Water as a single, integrated project. (Petitioner's Exhibit No. 3, p. 28.) Mr. Matthews asserted cross-collateralization is a common practice in real estate lending and

²² In its petition, Petitioner stated that the subdivision Granger Water will serve "is currently selling lots and has homes being constructed." Petitioner added that "If this proceeding has not established rates and charges by the time that homeowners desire to move in, Granger Water will serve such homeowners for free until rates and charges are lawfully established in this proceeding." Petition, p. 3.

added that it benefitted Petitioner in this instance by providing an avenue to secure a lower interest rate than it would otherwise have been able to procure if it was viewed as a stand-alone project.

While cross-collateralization may be common practice in real estate lending, encumbering utility assets to secure debt incurred by affiliates is neither common nor permitted by this Commission, and certainly not without express authorization to do so. One particularly troubling aspect of such cross-collateralization is that financial distress of an affiliate could lead to the seizing of assets of the utility. Moreover, the Commission has no visibility of the financial health or stability of the affiliate developer. While cross-collateralization may arguably lead to lower interest rates, it does so at the cost of greater risk to the utility and its customers. Moreover, any such additional risk would exist outside of the purview of the Commission.

Had Mr. Matthews secured Commission approval before borrowing the money used to construct Granger's treatment plant, we would have prevented it from using utility assets to secure the debt of its closely held affiliate. Likewise, had Petitioner requested debt authority at the appropriate time, we would have been able to address the prudence of Petitioner's decision to construct its own small treatment plant. We would not be evaluating Petitioner's proposal in light of plant already constructed and a customer already connected.

Independent of our determination in this order that Petitioner is not authorized rates for water service, for the foregoing reasons we would not and do not approve Petitioner's after-the-fact request for financing authority. We cannot approve financing that involves the encumbering of utility assets to secure affiliate debt. Nor does it make sense for us to authorize what Petitioner has already availed itself. We decline to authorize such financing practices at this time.

D. Deferred Accounting. Petitioner requested authority for deferred accounting treatment for purposes of collecting operating losses as a regulatory asset to be presented in a future rate proceeding. Petitioner clarified 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. Having found Petitioner should not be authorized initial rates at this time, we need not address Petitioner's request for deferred accounting treatment authorizing it to recover its operating losses.

Nonetheless, we note that 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. What Petitioner has proposed is in essence a path to achieve retro-active ratemaking. Petitioner's artificially low rates appears to be a means of preventing rates based on the true cost of providing water service from discouraging lot sales. Granger stated the \$75 rate is necessary to encourage sales by the developer. The regulatory process should not be used to back-in to higher rates under these circumstances. 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.

... it 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 ordinary request.

Ind. Mich. Power Co., Cause No. 40980 at 6-7 (IURC Nov. 12, 1998); *see also*, *Duke Energy Ind., Inc.*, Cause No. 43743 (IURC Ind. Oct. 19, 2011).

Had we authorized initial rates, we would not find Petitioner qualifies for this extraordinary treatment.

E. Customer Notice. Petitioner proposed providing each customer or prospective customer with a notice advising that Petitioner's proposed \$75.00 rate would not recover the cost of providing service or provide a return on its investment, as is allowed to the Petitioner under the Indiana Code. Petitioner modeled its notice after a form of notice approved in Cause No. 42011 (Southern Madison Utilities, LLC). OUCC witness Shawn Dellinger included a table in his testimony showing the monthly charges ratepayers would experience based on certain assumptions. He testified customers are aware there may be an increase at some point, but it is doubtful a reasonable interpretation of the notice prepares customers for the increases of the magnitude that are possible. Indeed, the only information conveyed by the notice is that \$75 is less than what Petitioner could be authorized to collect. Accordingly, the OUCC asserted Petitioner should be required to notify customers of what flat monthly rates would be assuming various numbers of customers based at the very least on Petitioner's own projections of customer growth, capital structure, investments in plant and operating costs.

During the Hearing both Mr. Smith and Mr. Matthews responded to questions about the notice provided to customers. Mr. Smith testified that the company for which he works Irish Realty is the exclusive listing agent for the lots in the Hills. Hr. Tr. A-A-11. Mr. Smith testified he works directly with prospective purchasers, and these prospective purchasers are not made aware that Granger Water will be operating at a loss for a number of years. Hr. Tr. A-9 -10. Moreover, he testified prospective purchasers are likewise not made aware that their provider of water service will be asking to create a regulatory asset for its losses. Hr. Tr. A-10.

Mr. Matthews testified customers are provided the notice "sometime after they have a reservation on the lot and are signing their contracts. Mr. Matthews suggested the notice should be presented before they are signing the contract but was not aware how far in advance of signing before the notice is given. Mr. Matthews could not verify when customers receive the notice. Hr. Tr. A-33-34.

Petitioner's notice to prospective customers that is deficient. The purpose of a notice is to ensure that customers have the facts at hand to make an appropriate decision on the purchase of their house. Granger Water's notification does not enlighten customers. Granger explained in

rebuttal (Matthews, Q39, page 33 of rebuttal) that the proposed language is reasonable and sufficient, because it is copied almost verbatim from a cause from 20 years ago (internal note, filed in May of 2001). This misses the point. The purpose is to inform customers. Regardless of whether it conforms to notice required in another unrelated case, the language that Granger proposed is not sufficient. It states that Granger proposes to initially charge \$75 per month. It states that “In the future, Granger Water may seek an increase in its rates that would allow recovery of the costs of providing service and provide a reasonable rate of return on Granger Water’s investment in the property used to provide water utility service”. As stated in Mr. Dellinger’s testimony it is doubtful a reasonable interpretation of this notice would prepare customers for increases of the magnitude that are possible. If customers are being told the rate is \$75, and it may go up at some point in the future, it is doubtful an increase of doubling or tripling would be contemplated. Mr. Dellinger suggested that current rates that would be required “to completely recover the cost of providing water utility service” would help customers understand the scope of allowable rates to which they would be subject. Granger should be willing to be transparent about rates projected by its own model. Granger should share what its rates could be for the current year, in five years, and in ten years. And this information should be provided before any prospective purchaser/customer is asked to make any commitment.

Connecting the Hills to Mishawaka’s system would presumably have avoided the importance of any notice to customers. Nonetheless, it is incumbent on us to address the type of notice Petitioner has proposed. Petitioner’s notice to customers discloses that rates do not cover all costs and that the amount charged initially is less than what the provider may be permitted charge in the future. However, this notice does not adequately convey how customers of this utility may be charged. The notice does not convey what Petitioner considers to be the full cost of service and its effect on future rates from year to year. Moreover, the Notice does not make it clear that Petitioner intends to secure approval to recover past losses in the future through a regulatory asset. Finally, the notice is provided too late in the process. Before being asked to sign any commitment, prospective customers should be explicitly advised of the actual costs of service, the likely effect on rates and the risks of estimation errors.

F. Confidentiality. On June 22, 2021, Petitioner filed a Motion for Protection and Nondisclosure of Confidential Information (the “Motion for Protection”) in this Cause, supported by an affidavit from Patrick Matthews showing that certain information to be submitted to the Commission contained financially sensitive information that (i) may derive actual and potential independent economic value from being neither generally known to, nor readily ascertainable by proper means by, other persons who could obtain economic value from its disclosure or use; and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy, and is therefore excepted from access to public records provisions contained in Ind. Code §§ 5-14-3-1, et seq., and 8-1-2-29. The Presiding Officers issued a Docket Entry on July 6, 2021 finding the information subject to the Motion for Protection should be held confidential on a preliminary basis, after which the information was submitted under seal. After review of the information and consideration of the affidavit supporting the Motion for Protection, we find the information is exempt from public access and disclosure pursuant to Ind. Code §§ 5-14-3-4 and 8-1-2-29 and shall be held confidential and protected from public access and disclosure by the Commission.

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

1. Petitioner request for certificate of public convenience and necessity over the 151-acre service area Petitioner proposed is hereby denied.
2. Petitioner's request for authorization to charge an initial rate \$75.00 per month flat rate is hereby denied without prejudice.
3. Petitioner's request for authority to charge an SDC and other related requests are hereby denied without prejudice.
4. The proposed non-recurring charges itemized by Petitioner in its rebuttal case are hereby denied.
5. Petitioner's loan and the encumbrance of its franchise, works, or system is hereby denied.
6. Petitioner's request to create a regulatory asset consisting of losses from operating expenses is hereby denied.
7. Petitioner shall pursue a connection to the City of Mishawaka in accordance with the Commission's main extension rules and as set forth above.
8. The information filed in this Cause pursuant to the Motion for Protection under Ind. Code § 5-14-3-4 is exempt from public access and disclosure by Indiana law and shall be held confidential and protected from public access and disclosure by the Commission.
9. This Order shall become effective on and after the date of its approval.

HUSTON, FREEMAN, KREVDA, OBER, AND ZIEGNER CONCUR:

APPROVED:

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

**Dana Kosco
Secretary to the Commission**

CERTIFICATE OF SERVICE

This is to certify that a copy of the *OUCC's Proposed Order* has been served upon the following counsel of record in the captioned proceeding by electronic service on December 27, 2021.

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