

ORIGINAL



STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION FOR COMMISSION REVIEW AND)
ADJUSTMENT, IF NECESSARY, OF RATE)
AND CHARGE DIFFERENCE BETWEEN) CAUSE NO. 44615
PROPERTY WITHIN AND PROPERTY)
OUTSIDE THE CORPORATE BOUNDARIES) APPROVED:
OF THE CITY OF EVANSVILLE, INDIANA)
("EVANSVILLE" OR "PETITIONER"))

SEP 23 2015

ORDER OF THE COMMISSION

Presiding Officers:

Angela Rapp Weber, Commissioner

Gregory R. Ellis, Administrative Law Judge

On April 13, 2015, the City of Evansville, Indiana ("Evansville" or "Petitioner") filed its Verified Petition ("Petition") in this matter. Along with the Petition, Evansville filed the direct testimony and exhibits, constituting its case-in-chief, of Allen R. Mounts, Director of Evansville Water and Sewer Utility ("EWSU") and Douglas L. Baldessari, a Certified Public Accountant with Umbaugh & Associates ("Umbaugh"). On June 26, 2015, the Indiana Office of Utility Consumer Counselor ("OUCC") filed a copy of a written comment from a consumer opposing implementation of the surcharge.

The Indiana Utility Regulatory Commission ("Commission") held an evidentiary hearing in this Cause at 10:30 a.m. on July 1, 2015, in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Evansville and the OUCC were present and participated. The testimony and exhibits of the Petitioner and the OUCC were admitted into the record without objection. The Presiding Officers granted the OUCC's request to take administrative notice of the Commission's Order in Cause No. 44485 and the testimony of Scott A. Bell, which was submitted in that Cause. No members of the general public appeared or sought to testify at the hearing.

Based upon the applicable law and evidence, the Commission now finds:

1. Notice and Jurisdiction. Notice of the hearing in this Cause was given and published by the Commission as required by law. Evansville's water utility is subject to the Commission's jurisdiction for the approval of rates and charges pursuant to Ind. Code ch. 8-1-2. Its sewer utility is not normally subject to the Commission's jurisdiction for the approval of rates and charges. *See Cities & Towns of Anderson v. Public Serv. Comm'n*, 397 N.E.2d 303, 310 (Ind. Ct. App. 1979). However, Ind. Code § 8-1.5-3-8.3(d) permits Evansville to request Commission approval of the rates and charges established by it through an ordinance, which was adopted on March 30, 2015, for sewer service to property located outside its corporate boundaries. Therefore, the Commission has jurisdiction over the Petitioner and the subject matter of this Cause.

2. **Petitioner's Characteristics.** Evansville is a municipality located in Vanderburgh County, Indiana. Evansville owns and operates plant and equipment within the State of Indiana for the furnishing of sewer service, through the EWSU, to customers located within and outside its corporate boundaries. EWSU's principal office is located at One NW Martin Luther King Jr. Boulevard, Evansville, Indiana 47708.

3. **Relief Requested.** Petitioner requests Commission approval of an additional monthly debt service surcharge established through an ordinance adopted by the Evansville Common Council on March 30, 2015, and to be imposed only on customers served by the former Old State Utility Corporation ("OSU") sewer system. Petitioner specifically requests that the Commission: (1) review the percentage difference between the rates and charges imposed on users of the EWSU sewer works for service to the properties served by the former OSU sewer system (the "OSU Properties") and users of the works for service to property within Evansville's corporate boundaries; (2) determine whether the difference is discriminatory, unreasonable, and unjust; and (3) if necessary, adjust the rates and charges imposed on the users of the works whose property is part of the OSU Properties. The percentage difference between the rates and charges proposed to be imposed on users of the works for service to the OSU Properties and property located within Evansville's corporate boundaries is 118%, assuming a residential monthly billing with 5,000 gallons of usage.

4. **Evansville's Acquisition of OSU Sewer Assets.** Evansville acquired the assets of OSU's sewer utility through an asset purchase agreement, effective as of November 30, 2014. The acquisition was approved by the Commission in its July 23, 2014 Order in Cause No. 44485.

5. **Petitioner's Evidence.** Allen Mounts testified that Evansville is proposing a surcharge be imposed on the OSU Properties because certain repairs and improvements are required with respect to the OSU Properties. Initially, these costs are being funded from proceeds of the EWSU Sewage Works Revenue Bonds, Series 2014C, issued by EWSU on August 21, 2014. The proposed monthly surcharge to be charged to users of the works whose property is part of the OSU Properties will reimburse the City for the repair costs and the related financing and debt service costs (the "Costs"). Mr. Mounts noted that in Cause No. 44485, EWSU informed the Commission that it was contemplating a monthly surcharge, but the amount of the surcharge was not known at that time because the extent of the repairs needed could not be known until the acquisition was completed and EWSU had an opportunity to evaluate the condition of the OSU assets.

Mr. Mounts indicated that a monthly surcharge in the amount of \$38.95 to be imposed on each of the OSU Properties was approved by the Evansville Common Council through Ordinance No. G-2015-7 ("the Ordinance"), which was adopted following a public hearing held on March 30, 2015. He stated the amount of the surcharge was based upon an analysis performed by Umbaugh and will be in effect until EWSU has been fully reimbursed for the Costs. He noted that each of the affected customers was mailed a notice of the proposed surcharge and the public hearing on the Ordinance. Notice was also published in the Evansville Courier & Press. He further noted customers have been notified that Evansville filed its Petition in this Cause.

Mr. Mounts stated that the surcharge is designed to recoup the costs of improvements to the former OSU sewer system from the customers served by those assets. He stated the Ordinance was adopted after a public process in which the affected customers were permitted to be heard, and the

Evansville Common Council determined the surcharge to be just and equitable after discussion and consideration of the Debt Service Surcharge Analysis presented by Umbaugh.

Douglas Baldessari testified that Umbaugh was retained by EWSU to assist with determining a possible debt service surcharge applicable only to the OSU Properties to support Petitioner's desire to make certain improvements to the former OSU sewer system that is now part of the Petitioner's sewage works system. He indicated that Umbaugh prepared an accounting report dated January 7, 2015, ("Accounting Report") summarizing the results of its studies related to the debt service surcharge. Mr. Baldessari identified the Accounting Report as Attachment DLB-1 to his testimony. The Accounting Report includes an estimate of the costs and funding of the capital improvements proposed by EWSU for the former OSU sewer system. The Accounting Report reflects estimated construction costs, together with contingencies, of \$772,000 and estimated non-construction costs of \$228,000, including engineering fees and other various soft costs, for a total estimated project cost of \$1,000,000.

Mr. Baldessari explained that the amortization of the portion of the bonds which will be used to finance the improvements to the former OSU sewer system is based on the principal amount of \$1,000,000 along with the same interest rates and bond term as the original 2014C Bond issue. The amortization schedule shows payment dates from January 1, 2015, to July 1, 2035. The principal repayments on the allocated portion of the 2014C Bonds are shown paid annually over a 20-year period beginning July 1, 2016. Interest is shown to be paid semi-annually and began January 1, 2015, with interest rates ranging from 2.00 % to 3.50 %. This allocated debt service will be repaid by the former OSU customers through a debt service surcharge. The Accounting Report calculates the monthly debt service surcharge of \$38.95 per user by: (1) dividing the total allocated debt service of \$1,393,837,¹ as depicted in the Accounting Report by the term of the 2014C Bonds to determine the average annual debt service requirement; (2) dividing the average annual debt service requirement of \$66,373 by the current number of former OSU users, which is 142, to obtain the annual debt service surcharge; and 3) dividing the annual debt service surcharge calculated at \$467.42 by 12. The Accounting Report also presents a representative monthly bill for the OSU Properties with a 5/8" meter connection using 5,000 gallons of water per month will be \$101.85, which includes the monthly debt service surcharge of \$38.95.

Mr. Baldessari testified that the costs of the proposed improvements to the former OSU sewer system should not have to be recovered through increased rates to the existing EWSU users. He stated that charging a debt service surcharge is an appropriate and fair way which allows the Petitioner the ability to spread the recovery of these costs among the benefited users, which are the former OSU customers. He concluded the debt service surcharge is fair, just, non-discriminatory, and reasonable. He indicated that it is a necessary method of recouping the costs of the improvements for the OSU Properties.

6. Commission Discussion and Findings. Ind. Code § 8-1.5-3-8.3(d) permits a municipality to petition the Commission to review and adjust, if necessary, the rates and charges imposed on users of the works for service to property located outside its corporate boundaries if the municipality adopts an ordinance that imposes rates and charges on those users that exceed the rates and charges imposed on users within the corporate boundaries of the municipality by more than the

¹ The amount of \$1,393,837 includes the principal amount of \$1,000,000 and an interest amount of \$393,837.

sum of the percentage difference approved or considered approved by the Commission under subsection (c) plus 15%. In this Cause, the Ordinance imposes rates and charges on OSU Properties users that exceed the rates and charges imposed on users within the corporate boundaries of Evansville by 118%.

Ind. Code § 8-1.5-3-8.3(d) and 170 IAC 1-7-3(b) require a petition to be filed not more than 14 days after the date on which an ordinance referred to in subsection (d) is adopted. In this Cause, the evidence demonstrates that Evansville's Petition was filed not later than 14 days after the date on which the Ordinance was adopted.

Ind. Code § 8-1.5-3-8.3(g) specifies that the burden of proof in cases under Ind. Code § 8-1.5-3-8.3(d) is on the municipality to show that the proposed rates and charges are nondiscriminatory, reasonable, and just. The statute provides further guidance in Ind. Code § 8-1.5-3-8.3(h):

For purposes of determining whether the percentage difference between rates and charges imposed on users of the works for service to property located outside the corporate boundaries of the municipality and the rates and charges imposed on users of the works for service to property located within the corporate boundaries of the municipality is nondiscriminatory, reasonable, and just under section 8 of this chapter, the [C]ommission:

- (1) may consider the benefit and expense to all users of the works of extending the works outside the corporate boundaries of the municipality; and
- (2) may not consider any connection fees or capital surcharges imposed on users of the works for service to property that is located outside the corporate boundaries of the municipality that are specifically designated to pay for the costs associated with main extensions to the users of the works.

Ind. Code § 8-1.5-3-8(c) provides that reasonable and just rates and charges for services means rates and charges that produce sufficient revenue to pay all the legal and other necessary expenses incident to the operation of the utility, including: maintenance costs; operating charges; upkeep; repairs; depreciation; interest charges on bonds or other obligations; and costs associated with the acquisition of utility property under Ind. Code ch. 8-1.5-2. Such rates must also produce sufficient revenue to provide a debt service reserve for bonds or other obligations, including leases, in an amount established by the municipality, not to exceed the maximum annual debt service on the bonds or obligations.

The evidence in this Cause reflects that the proposed surcharge to be imposed on users of the works serving the OSU Properties was calculated based upon the annual debt service requirement for Evansville's bonds used to fund necessary repairs and improvements to the OSU sewer system. The Evansville bond will be paid with interest payments beginning January 1, 2015, and continuing through July 1, 2035, and principal payments beginning July 1, 2016, and continuing through July 1,

2035. The estimated costs of the repairs and improvements to the OSU sewer were adequately supported by Petitioner's evidence submitted in this Cause. The debt service surcharge will remain in place only until EWSU has been fully reimbursed its debt service costs for the repair of the OSU system or July 1, 2035, whichever comes first.

We note that in the Commission's Order in Cause No. 44485 we recognized OSU's history as a troubled utility and authorized OSU, through its receiver, to transfer its assets to Evansville. In that Cause, Scott Bell of the OUCC indicated that it was in the best interest for the customers of OSU that the utility assets be transferred to Evansville. Mr. Bell attached to his testimony a memorandum from the OUCC to Mr. Mounts encouraging acquisition of a system beset with inflow and infiltration problems and acknowledging the necessity of a surcharge to allow Evansville to correct the OSU collection system's long-standing problems.

We find, based on the evidence of record, the debt service surcharge to the OSU Properties is fairly calculated to reimburse Evansville for the necessary investment in repairs and improvements to the OSU sewer system and the surcharge will be imposed on those customers who will directly benefit from Evansville's repair and improvement of that system. We further find the debt service surcharge is nondiscriminatory, reasonable, and just. Accordingly, Evansville's surcharge rate of \$38.95 for sewer service established through the Ordinance, adopted by the Evansville Common Council on March 30, 2015, should be approved.

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

1. Petitioner's proposed monthly debt service surcharge of \$38.95 to be imposed upon the customers taking service at properties formerly served by the OSU sewer system is approved until EWSU has been fully reimbursed for its debt service costs for the repair of the OSU system or July 1, 2035, whichever comes first.

2. This Order shall be effective on and after the date of its approval.

STEPHAN, HUSTON, WEBER, AND ZIEGNER CONCUR; MAYS-MEDLEY ABSENT:

APPROVED: SEP 23 2015

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


Brenda A. Howe
Secretary to the Commission