

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

Handwritten signatures and initials: J.A., CM, Laab

IN THE MATTER OF THE PETITION OF)
EDWARDSVILLE WATER CORPORATION,) CAUSE NO. 43869
A NONPROFIT CORPORATION, FOR)
AUTHORITY TO ISSUE LONG-TERM DEBT)
AND FOR APPROVAL OF A CHANGE IN) APPROVED:
RATES AND CHARGES) SEP 07 2011

BY THE COMMISSION:
Carolene Mays, Commissioner
Angela Rapp Weber, Administrative Law Judge

On March 2, 2011, the Indiana Utility Regulatory Commission (“Commission”) issued an Order in this Cause authorizing Edwardsville Water Corporation (“Edwardsville”) to increase its rates and charges by an average of 16.94%. The Commission also authorized Edwardsville to issue long-term debt to the United States Department of Agriculture–Rural Development (“Rural Development”) in the amount of \$1,585,000 to construct a water storage tank. On March 22, 2011, Edwardsville filed its Verified Petition for Rehearing and Reconsideration (“Petition for Rehearing”), seeking additional borrowing authority. The Petition for Rehearing explained that as a result of the acquisition of a parcel of land, Edwardsville would now like to construct a two million gallon standpipe water storage tank. Edwardsville estimated the cost to construct the standpipe to be \$1,708,500. On April 5, 2011, the Commission issued an Order stating it would consider Edwardsville’s revised request for relief as a request for a modified Order under Indiana Code § 8-1-2-72 and reopened this Cause for the consideration of additional evidence.

On March 29, 2011, the Town of Lanesville (“Lanesville” or “Town”) filed a Notice of Appeal with the Indiana Court of Appeals challenging the Commission’s March 2, 2011 Order in this Cause. Because Edwardsville had filed its Petition for Rehearing, Lanesville requested the Court of Appeals stay the appellate proceedings pending the resolution of the Petition for Rehearing. The Court of Appeals subsequently dismissed the appeal without prejudice indicating that Lanesville could refile its Notice of Appeal upon issuance of an Order by the Commission. On April 12, 2011, Lanesville filed a Petition to Intervene in this Cause, and the Presiding Officers granted it pursuant to a Docket Entry dated April 18, 2011.

On April 12, 2011, Edwardsville prefiled the Supplemental Testimony and Exhibits of Robert E. Curry, a registered professional engineer, and Scott A. Miller, a certified public accountant. Neither the Office of the Utility Consumer Counselor (“OUCC”) nor Lanesville filed testimony and exhibits in response to Edwardsville’s April 12, 2011 prefiled evidence.

On April 29, 2011, Edwardsville filed its Submission of Evidence of Notice to Customers of Proposed Rate Change, as well as the Supplemental Testimony and Exhibits of Dale Lafferre, the President of the Board of Directors for Edwardsville. In response, Lanesville filed its

Response to Submission of Evidence of Notice to Customers on May 9, 2011 and the responsive testimony of Steven K. Brock on May 13, 2011.

Pursuant to notice as prescribed by law, the Commission conducted an Evidentiary Hearing on May 24, 2011 at 1:30 p.m. in Room 224, 101 West Washington Street, Indianapolis, Indiana. Edwardsville, the OUCC, and Lanesville were present at the Hearing. Edwardsville and Lanesville offered their respective testimony and exhibits, which were admitted into the record. No members of the public attended or attempted to participate in the Evidentiary Hearing.

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

1. **Notice and Jurisdiction.** Due, legal, and timely notice of the Evidentiary Hearing was given as required by law. Edwardsville is a public utility as defined by Indiana Code § 8-1-2-1 and is subject to the jurisdiction of the Commission in the manner and extent provided by Indiana Code ch. 8-1-2. Accordingly, the Commission has jurisdiction over this matter.

2. **Edwardsville's Characteristics.** Edwardsville is a nonprofit rural water corporation organized and existing under the laws of the State of Indiana. Edwardsville began providing water service in the 1960s and now serves approximately 3,800 retail customers and three wholesale customers in Floyd and Harrison Counties, Indiana. In serving its customers, Edwardsville utilizes wells, a treatment plant, and water transmission, distribution, and storage facilities.

3. **Relief Sought.** On March 2, 2011, the Commission authorized Edwardsville to issue long-term debt to Rural Development in an amount not to exceed \$1,585,000 for the purpose of constructing a one million gallon elevated storage tank with related improvements ("Elevated Tank"). In its Petition for Rehearing, Edwardsville described how it had recently been able to acquire a parcel of land with an elevation that would allow Edwardsville to now consider constructing a two million gallon standpipe water storage tank ("Standpipe Tank"). Edwardsville estimated that the cost of constructing the Standpipe Tank would be \$1,708,500 as opposed to the \$1,585,000 to construct the Elevated Tank. Edwardsville's Petition for Rehearing seeks approval to borrow an additional \$123,500 in order for Edwardsville to construct the Standpipe Tank. Edwardsville explained that the evidence concerning the parcel of land and Standpipe Tank was not available prior to the issuance of the Commission's March 2, 2011 Order.

4. **Edwardsville's Evidence.**

A. **Adequacy of Notice.** Mr. Lafferre testified concerning Edwardsville's efforts to communicate with its customers about the construction of a water storage tank. He said the Edwardsville Board of Directors ("Board") began discussing the Elevated Tank project with Edwardsville's customers at Edwardsville's March 9, 2010 annual meeting. Mr. Lafferre explained that at this meeting, the Board informed its members of its plan to construct the Elevated Tank, including the planning, permitting, regulatory approvals, and land acquisition that would need to occur to make the project a reality. According to Mr. Lafferre, the Board explained at the 2010 annual meeting that Edwardsville would seek a loan from Rural Development, and the repayment of the loan would likely require some sort of rate increase. Mr. Lafferre testified Lanesville regularly had a representative attend Edwardsville's annual

meetings, and Lanesville had a representative in attendance at the 2010 meeting. Mr. Lafferre said all of the members present at the 2010 meeting voted unanimously to proceed with the Elevated Tank project.

Mr. Lafferre said Edwardsville filed its Petition initiating this case after the March 9, 2010 annual meeting. After filing its Petition initiating this Cause, Edwardsville determined it needed to perform a cost of service study (“COSS”) to evaluate potential rate changes to Edwardsville’s different customer groups. According to Mr. Lafferre, the Board immediately hired Scott Miller from Umbaugh & Associates to complete the COSS. Mr. Lafferre explained Edwardsville did not know what rates would be charged to its customer classes until the COSS was completed. As soon as the COSS was completed and approved by the Board, the study was filed with the Commission and notice was provided to Edwardsville’s customers.

Mr. Lafferre stated individual notice was given to the wholesale customers on September 20, 2010, and a second notice was sent to the wholesale customers and all residential customers on September 23, 2010. Copies of the notices were attached to Mr. Lafferre’s testimony as Exhibit 12 and Exhibit 13, respectively. Mr. Lafferre said the notices were faxed to the wholesale customers and sent via regular mail. Mr. Lafferre believed the notices were received because of inquiries received from wholesale customers concerning Edwardsville’s proposed rate increase. He also provided Exhibit 15, a copy of a notice of public hearing Edwardsville published on February 17, 2011 in a local newspaper regarding the borrowing of funds from Rural Development. According Mr. Lafferre, pursuant to the February 17, 2011 notice, a public hearing was held on March 15, 2011. Mr. Lafferree provided a copy of the minutes taken at the March 15, 2011 hearing, marked as Exhibit 16. According to Exhibit 16, no members of the general public attended.

Finally, Mr. Miller testified at the Evidentiary Hearing that an evaluation determining an across-the-board revenue requirement was completed on May 20, 2010. However, he testified the COSS was not completed until August 6, 2010, which is also the day it was filed with the Commission. The rates to be charged to the different classes of customers were significantly different under the COSS than the rates provided in the evaluation completed on May 20, 2010. Tr. at C-30–C-31.

B. Additional Long-Term Debt to Rural Development. Mr. Robert E. Curry testified on behalf of Edwardsville. Mr. Curry described the new circumstances and technical considerations that support Edwardsville’s request to issue additional long-term debt to Rural Development. Mr. Curry stated that since the November 2010 Evidentiary Hearing in this Cause, Edwardsville was able to finalize an agreement to acquire a parcel of property from the United States Army Corps of Engineers. According to Mr. Curry, the acquisition of the parcel of land was particularly important for Edwardsville because it is the highest point of elevation in Floyd County. The higher elevation allowed Edwardsville to study and consider constructing the larger, more versatile Standpipe Tank.

Mr. Curry stated his engineering firm prepared a revised Preliminary Engineering Report dated February 17, 2011 (“Revised PER”) that described the Elevated Tank and Standpipe Tank alternatives. The Standpipe Tank will offer the same improved water pressure as the Elevated Tank. However, Mr. Curry said the Standpipe Tank would be superior to the Elevated Tank

because it would provide twice as much storage for back-up and emergency source of supply. The Standpipe Tank would also require significantly less maintenance and allow for a much longer tank life because it will be constructed of steel with a glass fused coating. Mr. Curry stated the Standpipe Tank would increase the estimated project costs by \$123,500 (from \$1,585,000 to \$1,708,500).

Mr. Curry testified that even though the capital and debt service costs will be higher for the Standpipe Tank, the maintenance costs associated with owning and operating the Standpipe Tank would result in a rate that is roughly equal to or even less than the rate previously approved by the Commission in its March 2, 2011 Order in this Cause. Mr. Curry stated the Revised PER provides a detailed analysis comparing the costs of the Elevated Tank and Standpipe Tank. At the May 24, 2011 Evidentiary Hearing, Mr. Curry stated Rural Development approved the Revised PER and environmental report and agreed with every aspect of the Standpipe Tank project. Tr. at C-17.

Mr. Scott A. Miller also testified on behalf of Edwardsville concerning the modified project costs and anticipated rate impact for the Standpipe Tank alternative. Mr. Miller explained that based on the cost estimates set forth in his Accounting Report, Petitioner's Exhibit 9, Edwardsville needs a modified Order from the Commission increasing Edwardsville's borrowing authority from \$1,585,000 to \$1,708,500. Thus, Edwardsville is requesting additional borrowing authority of \$123,500 and is not requesting a change to its rates and charges at this time.

Mr. Miller testified that as demonstrated in his Accounting Report, the annual operational maintenance savings from the Standpipe Tank alternative offset the higher annual principal and interest payments associated with the additional borrowing. As a result, Mr. Miller explained, Edwardsville would not need to change its rates due to the additional borrowing. Mr. Miller said, however, that fluctuating interest rates may cause Edwardsville to adjust its rates as part of the "true-up" process. Mr. Miller proposed to "true-up" the interest rate and final user rates after construction and final borrowing were complete.

5. Lanesville's Evidence. Steven K. Brock, a consultant with the firm Therber & Brock, testified on behalf of Lanesville. Mr. Brock explained he is a former member of the Commission's accounting division and holds a certified public accountant certificate. Further, he has over thirty years of experience working with utilities and examining their rate structures, and he has testified before the Commission on numerous occasions.

Mr. Brock testified Lanesville retained him to form an opinion on whether Edwardsville's notice of its proposed rate increase provided sufficient time for Lanesville to respond. In evaluating that question, Mr. Brock reviewed a variety of material including the Supplemental Testimony and Exhibits of Mr. Lafferre, which Mr. Brock explained described the notification process followed by Edwardsville.

Mr. Brock acknowledged that a notice dated September 20, 2010 was sent to Lanesville which showed an increase in the base charge of 12% and a volumetric charge increase of 21%. Mr. Brock stated this notice, sent roughly six months after Edwardsville filed its Petition, did not provide sufficient time for Lanesville to challenge the requested increase. Mr. Brock testified the Lanesville Town Council can only meet and discuss Town business at meetings that have been

noticed to the public. Lanesville's regularly scheduled meetings are on the second Monday of each month and, as a result, the earliest Lanesville could have held a meeting to discuss the September 20, 2010 notice would have been Monday, October 11, 2010. He said that under the modified procedural schedule requested by Edwardsville's May 21, 2010 motion, the pre-filing date for any intervenors was October 29, 2010.

Mr. Brock explained that because the Town Council meets in the evening and because of intervening weekends, Lanesville would have had only fourteen working days to prepare testimony following a properly noticed discussion of the September 20, 2010 notice. Mr. Brock testified that if Lanesville had wanted to file testimony and exhibits within that time period, they would have had to hire a team comprised of utility attorneys, rate consultants, and environmental engineers to review the filing and determine whether any issues pertained to Lanesville's interests. According to Mr. Brock, to accomplish an initial review would have required obtaining the filing made by Edwardsville and associated workpapers, submitting data requests, and assessing whether the proposed rates and charges were fair and reasonable. That assessment would then have to be discussed with the various team members, and any issues would have to be presented to the Town Council to determine if the Town wished to proceed. Assuming the Town wished to proceed, Mr. Brock stated, testimony and exhibits would then have to be prepared, reviewed, and filed with the Commission.

Mr. Brock stated that in his opinion, the amount of time given to Lanesville to perform these tasks diligently was not adequate or reasonable. Mr. Brock further opined that in any rate case, the time for Lanesville to respond would not have been sufficient to even assemble a team necessary to analyze the issues. This was especially true, in this case, because the filing included a COSS, which Mr. Brock testified adds complexity and time to any examination. Mr. Brock also opined that the sixty-two days between the notice and the Evidentiary Hearing in this matter was insufficient to allow Lanesville to properly prepare for cross-examination of Edwardsville's witnesses. In fact, Mr. Brock testified, Edwardsville's failure to provide notice to Lanesville until September 20, 2010 prevented Lanesville from effectively participating in the entire proceeding.

With respect to wholesale customers, like Lanesville, Mr. Brock testified notice should be given to those customers at the time a utility files its petition in order to give the customer sufficient time to intervene and participate in the prehearing conference. According to Mr. Brock, early notice would also advise a wholesale customer of all the filing dates and provide the customer with an opportunity to assemble the team of consultants necessary to review the filing in a timely and diligent manner. Early notice would also provide the customer ample opportunity to schedule special meetings, if necessary. At the bare minimum, Mr. Brock stated, customers should receive notice of the amount of the proposed increase no later than the date of a petitioner's pre-filing of its evidence.

Mr. Brock explained that in general, such early notice would help avoid "lost time" between the filing date and the date of notice. He noted that because Edwardsville waited an additional forty-six days from its pre-filing date of August 6, 2010 to notify its customers on September 20, 2010, Lanesville lost the opportunity to use its August 9, 2010 and September 13, 2010 meetings to assess the magnitude of Edwardsville's rate increase. According to Mr. Brock, if Lanesville had received notice on August 6, 2010 contemporaneously with Edwardsville's

prefiling, it would have had an additional two months to evaluate that filing.

Mr. Brock did not believe that requiring such early notice was onerous or otherwise problematic. He noted that the price for the notice relating to the Rural Development loan was \$8.89. He surmised that because the September 20, 2010 notice was typed, then faxed and mailed, the cost would have been minimal. Mr. Brock further stated notice provided at the time of the filing of a petition need only reflect the information known at that time, while notice at the prefiling stage could easily reflect all necessary numerical information as it would be known at that time.

6. Commission Discussion and Findings.

A. Adequacy of Notice. Lanesville argues that Edwardsville's notice was insufficient to provide Lanesville with sufficient time to prepare evidence and participate in this Cause. 170 IAC 6-1-18(C), the Commission's rule outlining the type of notice required for a proposed rate change states, "Each utility, whenever it petitions the Commission for a change in any of its base rate schedules must furnish to each customer within forty-five (45) days of such request and prior to the date of the public hearing a notice which fairly summarizes the nature and extent of the proposed changes."

Edwardsville filed its Petition in this Cause on March 11, 2010 and provided notice to Edwardsville on September 20, 2010, which is more than forty-five days from the date of the Petition. Edwardsville asserts, however, that notice could not have been provided within forty-five days of the Petition because it did not know the amount of the rate increase until it performed a COSS. The COSS was filed with the Commission on August 6, 2010, and Edwardsville provided notice to Lanesville regarding the proposed rate increase on September 20, 2011, which is forty-five days from the date of the filing of the COSS. Lanesville received notice sixty-two days prior to the date of the Evidentiary Hearing. The notice stated the amount of increase Lanesville would experience. The question to be answered is whether the provision of notice of the proposed rate increase to Lanesville within forty-five days from the completion of the COSS, instead of the filing of the Petition, substantially satisfies the requirements of 170 IAC 6-1-18(C).

The Commission previously addressed a similar issue in *Odon Tel. Co., Inc.*, Cause No. 38034, 1986 Ind. PUC LEXIS 102 (IURC Oct. 22, 1986). In that case, the Odon Telephone Company ("Odon") filed its Petition for, among other things, a rate increase on April 4, 1986. The issues were bifurcated, and evidence concerning the requested rate increase was filed with the Commission on August 22, 1986. *Odon Tel. Co.*, 1986 Ind. PUC LEXIS 102, at *1-*2, *6. Odon also filed on August 22, 1986 copies of the notices sent to residential customers concerning the proposed rate increase on that same day. *Id.* at *6. As a result of Odon's failure to provide notice of the rate increase to customers within forty-five days of the filing of its petition, the OUCC filed a motion to dismiss. *Id.* at *3.

The Commission, in *Odon*, observed that although notice was not sent to customers within forty-five days of the filing of the petition, it was sent forty-eight days prior to the date of the evidentiary hearing on the rate request, which was scheduled for October 9, 1986. The Commission also recognized that Odon did not know the amount of the rate increase within

forty-five days of the filing of the petition. *Id.* at *7. Consequently, the Commission concluded, “[A]mple notice to subscribers to permit them to make inquiries, prepare for and participate in the hearing on the merits of [Odon’s] proposed changes to local exchange service rates was provided. [Odon’s] customers are not substantially prejudiced by the timing of such notice.” *Id.*

The Commission further analyzed the effect that granting the OUCC’s motion to dismiss would have on Odon and its customers. We explained, “[Odon] . . . would be substantially prejudiced by an application of 170 IAC 7-1.1-18(D) that would result in dismissal of its petition thereby preventing timely consideration of its need for increases in annual revenues [and financing] . . . , and Petitioner’s customers could be substantially prejudiced by a delay in service improvements.” *Id.* at *8. The fair and appropriate action to be taken in the event of inadequate or untimely notice would be to delay the proceeding until notice can be provided to ratepayers instead of dismissing the petition when bad faith has not been shown. *Id.* at *8–*9.

Like the petitioner in *Odon*, Edwardsville did not know the exact amount of its rate increase within forty-five days after filing its Petition. However, Edwardsville did provide notice to Lanesville within forty-five days from the date it filed the COSS with the Commission and when it knew of the amount of the rate increase. Further, Edwardsville provided notice to Lanesville of the rate increase sixty-two days prior to the Evidentiary Hearing. Like in *Odon*, there is no evidence that Edwardsville acted in bad faith.

Additionally, as in *Odon*, the evidence in this case does not demonstrate that Lanesville has been substantially prejudiced by the timing of the notice. The evidence presented indicates Lanesville knew of the pending rate increase as early as Edwardsville’s March 2010 annual meeting because Lanesville’s representative at the 2010 annual meeting voted to approve the construction of the water storage project. Lanesville, having previously participated in a Commission proceeding concerning Edwardsville (Cause No. 43003), could have petitioned to intervene in this Cause and requested a continuance of the proceedings in order to prepare and present evidence regarding Edwardsville’s proposed project and rate increase. According to the minutes from the November 8, 2010 meeting, the Lanesville Town Council planned to write letters of objection to the Commission and OUCC regarding Edwardsville’s rate increase. Petitioner’s Exhibit 17 at 85. However, the Commission never received a letter from Lanesville concerning Edwardsville’s proposed project and rate increase. We further note that when Lanesville did Petition to Intervene on April 12, 2011, it still presented no evidence concerning Edwardsville’s proposed project and rate increase; instead, Lanesville only objected to the timeliness of the notice.

Moreover, Mr. Brock, in his prefiled direct testimony, states that as a result of the timing of the notice, the earliest Lanesville could have held a Town Council meeting to discuss whether it should participate in this Cause would have been Monday, October 11, 2010. However, on cross-examination at the Evidentiary Hearing, Mr. Brock testified Lanesville could have held a special meeting by providing forty-eight hours notice after receiving notice from Edwardsville. Tr. at D-9. Lanesville did not do so even though it has held multiple special meetings in the past. *See, e.g.*, Petitioner’s Exhibit 17 at 7, 15, 19, and 28.

Like *Odon*, the harm to Edwardsville of dismissal or revocation at this point would be significant. Significant costs have been incurred and work has been completed under this Cause,

including the completion of an engineering report, the filing of testimony and exhibits, and the implementation of a lengthy loan application process with Rural Development for a low interest federal loan, all of which culminated in the issuance of an Order by the Commission on March 2, 2011. Further, the record has been reopened to permit the filing of additional evidence and exhibits as the result of Edwardsville's completion of negotiations with the Army Corps of Engineers and acquisition of land for its proposed water tank project. If the Commission were to dismiss Edwardsville's Petition, a much needed capital improvement project would be delayed, the financing with Rural Development would be jeopardized, the cost of the project could increase, and Edwardsville's customers, including Lanesville, could face a larger rate increase.

In sum, while Edwardsville did not provide notice within forty-five days after filing its Petition, Edwardsville did provide notice within forty-five days after Edwardsville knew the nature and extent of the rate increase for its different classes of customers. Also, this notice was provided sixty-two days before the Evidentiary Hearing. The Commission notes Lanesville was aware Edwardsville's rates would likely change as early as March 2010, but Lanesville did not choose to participate in this Cause until April 2011 and offered no evidence or opinion concerning Edwardsville's proposed project and rates. Accordingly, the Commission finds that based on the evidence in this Cause, the notice provided by Edwardsville was sufficient and provided ample opportunity for its customers to seek to participate in the proceeding.

Although the Commission finds the notice provided by Edwardsville was sufficient to allow intervention and participation by its customers in the proceeding and Lanesville was not substantially prejudiced by Edwardsville's failure to strictly adhere to 170 IAC 6-1-18(C), in the future we fully expect Edwardsville to provide notice to its customers within forty-five days of filing a petition. If the extent of the increase is not known, the utility can delay the filing of its petition until it is known, or the notice should provide the utility's best estimation of the rate increase. If the estimated increase in the notice is later determined to be substantially different from the increase actually requested, the utility could provide an updated notice to its customers.

B. Additional Long-Term Debt to Rural Development. The evidence of record demonstrates that the proceeds from the issuance of additional long-term debt will be used to install the Standpipe Tank. While slightly more expensive to construct, according to the evidence, the Standpipe Tank will benefit Edwardsville's customers and is superior to the Elevated Tank project that was approved in the Commission's March 2, 2011 Order. Specifically, the Standpipe Tank will offer almost twice as much storage, have lower ongoing operational and maintenance costs, and have a longer life than the Elevated Tank. Further, Edwardsville's rates approved by the Commission in our March 2, 2011 Order will not increase as a result of the additional funds requested to construct the Standpipe Tank. The Commission notes the OUCC and Lanesville did not offer evidence opposing the funding for or construction of the Standpipe Tank. Therefore, we hereby approve Edwardsville's request to construct the Standpipe Tank and to increase the amount of its proposed borrowing from \$1,585,000 to \$1,708,500.

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

1. Pursuant to Indiana Code § 8-1-2-72, we hereby amend our March 2, 2011 Order to authorize Edwardsville to incur an additional \$123,500 in long-term debt in order to complete the Standpipe Tank project with related improvements. Edwardsville is hereby authorized to incur long-term debt in an amount not to exceed \$1,708,500.

2. Upon completion of the project financed by Rural Development, Edwardsville shall file a true-up report with the Commission detailing the exact amount of debt to be incurred, the final interest rate from Rural Development, and the corresponding rates.

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

ATTERHOLT, BENNETT, MAYS AND ZIEGNER CONCUR; LANDIS ABSENT:

APPROVED: SEP 07 2011

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


Sandra K. Gearlds
Acting Secretary to the Commission