

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

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APPLICATION OF PRAIRIE UTILITIES INC.,)
FOR A CERTIFICATE OF TERRITORIAL)
AUTHORITY TO RENDER SEWAGE) CAUSE NO. 44158
DISPOSAL SERVICE IN A RURAL AREA OF)
TIPTON COUNTY, INDIANA, AND TO)
ESTABLISH LAWFUL RATES AND NON-) APPROVED:
RECURRING CHARGES FOR SUCH SEWAGE) MAR 14 2013
DISPOSAL SERVICE.)

ORDER OF THE COMMISSION

Presiding Officers:

Carolene Mays, Commissioner
Jeffery A. Earl, Administrative Law Judge

On February 20, 2012, Prairie Utilities, Inc. ("Petitioner") filed with the Indiana Utility Regulatory Commission ("Commission") its Verified Application for a Certificate of Territorial Authority to Render Sewage Disposal Service and to Establish Non-Recurring Charges for Such Sewage Disposal Service. On March 20, 2012, the City of Kokomo, Indiana, ("Kokomo") filed a Petition to Intervene in this Cause, which the Commission granted in an April 3, 2012 Docket Entry.

Pursuant to 170 IAC 1-1.1-15 and notice, given and published as required by law, the Commission held a Prehearing Conference in this Cause at 10:00 a.m. on March 21, 2012, in Hearing Room 224, 101 West Washington Street, Indianapolis, Indiana. Petitioner, the Indiana Office of Utility Consumer Counselor ("OUCC"), and Kokomo appeared and participated at the Prehearing Conference. The Commission issued its Prehearing Conference Order in this Cause on March 28, 2012.

On April 25, 2012, Petitioner filed a Request to Take Administrative Notice of certain exhibits in Cause No. 43916, which the Commission granted in its May 10, 2012 Docket Entry. On June 28, 2012, the OUCC filed a Request for a Field Hearing and Modification of Procedural Schedule, which the Commission granted in its July 18 and August 13 Docket Entries. Pursuant to notice, given and published as required by law, the Commission held a Field Hearing at 6:00 p.m. on August 16, 2012, at the Tri Central High School Auditorium, 2115 West 500 North, Sharpsville, Indiana. Numerous members of the public appeared and testified at the Field Hearing. Counsel for Petitioner and the OUCC appeared and participated at the Field Hearing, and OUCC's Exhibit FH-1 was offered and accepted into evidence.

Pursuant to notice, given and published as required by law, the Commission held an Evidentiary Hearing at 1:00 p.m. on October 19, 2012, in Hearing Room 222, 101 West Washington Street, Indianapolis, Indiana. At the hearing, Petitioner, the OUCC, and Kokomo offered their respective exhibits, which were admitted into the record, and the witnesses were made

available for cross-examination. No members of the general public appeared or sought to appear at the hearing.

Based on the applicable law and the evidence presented, the Commission finds:

1. **Notice and Jurisdiction.** Notice of Petitioner's Application and each of the Commission hearings held in this Cause was given and published as required by law. The Commission has jurisdiction over Petitioner's request for a rural sewer CTA pursuant to Ind. Code § 8-1-2-89. If Petitioner's request for a CTA is granted, Petitioner will become a "public utility" as defined by IC 8-1-2-1(a)(3) and a "sewage disposal company" as defined by IC 8-1-2-89(a)(2). The Commission has jurisdiction of the rates of public utilities and sewage disposal companies pursuant to Ind. Code ch. 8-1-2. Therefore, the Commission has jurisdiction over Petitioner and the subject matter of its Application in the manner and to the extent provided by law.

2. **Petitioner's Characteristics.** Petitioner was formed on January 3, 1977, to provide service to the Red Carpet Motel and the Prairie Acres subdivision located in Tipton County near Sharpsville, Indiana. Petitioner currently serves three commercial and fifty-four 54 residential customers. In 1999, Petitioner constructed a new wastewater treatment plant at a cost of approximately \$300,000 and having a maximum capacity of 50,000 gallons per day ("GPD"). The collection system consists of a lift station located at the treatment plant, several manholes, and clay tile to connect to the customer properties. Petitioner holds a valid NPDES Permit issued by the Indiana Department of Environmental Management ("IDEM"). Petitioner does not currently have a Certificate of Territorial Authority ("CTA") from the Commission.

3. **Relief Requested.** Petitioner seeks a CTA to provide sewage disposal service in a rural area ("Proposed Area") of Tipton County, Indiana. Additionally, Petitioner seeks the establishment of lawful rates and charges for its sewage disposal service and certain non-recurring charges.

4. **Test Year and Cutoff Date.** The Prehearing Conference Order in this Cause determined that the test year for determining Petitioner's actual and pro forma operating revenues, expenses and operating income under present and proposed rates would be the twelve months ended December 31, 2011, adjusted for changes that are fixed, known and measurable for ratemaking purposes and that occur within twelve months following the end of the test year. The rate base cutoff shall reflect used and useful property at the end of the test year. The Commission finds that this test year, when coupled with the adjustments accepted herein, is reflective of the Petitioner's actual operations and is reliable for ratemaking purposes.

5. **Petitioner's Case-In-Chief.**

A. **Direct Testimony of Thomas Astbury.** Thomas Astbury, Petitioner's President, described his work experience. For the past nine years, he has held a variety of positions in the Astbury Group of environmental companies. The Astbury Group is a collection of three separate entities specializing in environmental laboratory analysis, environmental consulting and remediation, and drinking water and wastewater treatment system management, operation, and maintenance. During the summers of 2001, 2002 and 2003, Thomas Astbury worked in the sample receiving department of ESG Laboratories ("ESG"), an environmental laboratory analysis firm. Throughout summers during college (beginning in 2005), he held various positions at Astbury

Water Technology, Inc. (“AWT”), ranging from sales associate to his current position as a business development analyst. AWT is an organization that operates, maintains, and manages drinking water and wastewater systems for commercial, industrial, and government clients.

Since January of 2010, Thomas Astbury has been President of JLB Development, Inc. (“JLB”), a sewer utility located in Hamilton County, Indiana. As part of his continuing duties at JLB, he is responsible for ensuring environmental compliance through his oversight of subcontractors, including AWT, which operates and maintains the sewage system. In addition, Mr. Astbury oversees all aspects of customer billing and collections, accounting, and reporting to the Commission. Thomas Astbury is also responsible for the treatment system improvements at JLB.

Thomas Astbury testified that on November 10, 2009, he and Daniel Astbury purchased all of Petitioner’s outstanding stock from Mr. Bryan Klein. Daniel Astbury, who serves as the secretary of the corporation, owns 50.12% of Petitioner’s shares. Thomas Astbury, who serves as President and Director of the corporation, owns 49.88% of Petitioner’s shares. Since the acquisition, Thomas Astbury has provided managerial services to Petitioner in addition to assisting with environmental compliance tasks. Since the date of the purchase, AWT has provided operation and maintenance services to Petitioner.

Thomas Astbury described Petitioner’s history, existing service area, system, and customers. Petitioner was formed on January 3, 1977, to provide sewer service to a small hotel and the newly-plotted Prairie Acres subdivision, which is located in Prairie Township, Tipton County. Over time, the subdivision was expanded and now has sixty houses with five buildable lots remaining. Of the sixty houses located within the subdivision, fifty-one are customers of Petitioner and nine have septic service. In addition, Petitioner has three commercial customers. Throughout much of Petitioner’s history, the treatment facility has had compliance issues with the Indiana Department of Environmental Management (“IDEM”). The sewer collection system also has inflow and infiltration (“I&I”) difficulties. In response to compliance issues, the former owners completed construction of a wastewater treatment facility on June 15, 1999. The facility, which has approximately five times the capacity of the old package-type treatment facility, cost over \$300,000.

Thomas Astbury described the condition of the treatment plant when the Astbury’s acquired the system. Although the treatment plant is a concrete Aero-Mod facility (constructed in 1999 to resolve an Agreed Order from IDEM), it suffers from surface and household infiltration. Many manholes in the collection system have had holes drilled into them to allow for storm water removal; in addition, many households have gutters and basement pumps connected to the system. It is also suspected that a field drainage tile is connected to the collection system. These issues, which allow runoff to sometimes overwhelm the wastewater treatment facility, combined with the fact that the facility was not properly utilizing Phosphorus-precipitating chemicals, meant that it had routine Total Suspended Solids, cBOD, Ammonia-Nitrogen, Phosphorus, and E. coli violations—especially in months where there is a high amount of precipitation. In addition to infiltration and Phosphorus removal issues, Petitioner’s electrical system was in disrepair, causing blower motors and lift station pumps to burn-up. Blower and lift station outages compounded existing Phosphorus and infiltration problems by depriving the biomass of dissolved oxygen. The treatment facility also lacked on-site telemetry to notify operational personnel of equipment failures and infiltration events. Finally, the treatment system relied upon an antiquated chlorine tablet disinfection system which resulted in E. coli permit violations.

Thomas Astbury described the system improvements that have been accomplished since he and Daniel Astbury acquired Petitioner Utilities. Beginning in December 2009, Petitioner began an aggressive repair and upgrade schedule for the utility. Significant progress has been achieved, but additional improvements must be made in order to achieve consistent environmental compliance. Thomas Astbury summarized the following operational improvements, repairs, and upgrades that have been either completed or initiated:

(1) System Operation. The treatment system is now visited a minimum of five times per week by AWT's certified wastewater operators in order to head off potential problems and manage environmental compliance. AWT also has provisions in-place to augment sick or vacation days taken by primary operational personnel and to respond to emergency service calls. AWT's maintenance department is available to implement necessary facility repairs and upgrades.

(2) Blowers and On-Site Telemetry. Significant time and money has been invested to improving electrical service to the facility to address problems with blower reliability. In addition, Petitioner has improved ventilation in the blower building to eliminate shut-downs due to high temperature. A cellular-based auto-dialer system was installed so that on-call operators are notified any time there is an unanticipated blower or equipment issue.

(3) Collection System. By July 1, 2012, the entire collection system will have been smoke tested to address I&I issues. If, following the completion of smoke testing and repair of major collection system issues, I&I continues to be a problem, additional collection system and treatment facility upgrades and repairs will be studied.

(4) Flow Meter and High Flow Management. The original flow meter was not working properly. A new downloadable meter was installed with an output that allows for communication between various components of the treatment facility. Specifically, the blowers were wired to the flow meter so that they shut down during high flow periods. In the past, during periods of high flow, solids from the mixed-liquor tank were washed out of the treatment facility by the blowers. Because the flow meter now temporarily disables the blowers during periods of high flow, washouts of this nature are much less of a problem and solids are retained in the mixed-liquor basin. This project has greatly reduced the incidents of solids discharging from the plant during elevated flows caused by infiltration.

(5) Disinfection System. Petitioner installed an ultraviolet disinfection system at the final flow metering area. This system replaces the chlorine tablet disinfection unit, which was antiquated and in disrepair. Also, prior to this upgrade, chlorine was administered prior to the two-day polishing ponds where E. coli colonies were allowed to enter the effluent. Since the effluent is disinfected after the polishing ponds, this is no longer a problem.

(6) Phosphorus. Phosphorus permit violation issues have successfully been addressed through a conversion from granular Aluminum Sulfate to liquid Ferric Chloride treatment. Previously, granular Aluminum Sulfate was mixed with water and fed to the head works of the treatment facility. This system was unreliable because the Aluminum Sulfate frequently fell out of solution and the metering pump would lose its prime. These issues were

successfully resolved by upgrading the chemical delivery system to allow for a continuous feed of liquid Ferric Chloride.

(7) Effluent Dissolved Oxygen. To resolve frequent effluent dissolved oxygen violations, an aeration diffuser was placed in the “final” area of the flow metering basin in 2010. Since the installation, effluent dissolved oxygen issues have been eliminated.

Thomas Astbury described the condition of the plant now that improvements have been made. Although many repairs and upgrade projects have been undertaken, the facility still has issues with maintaining compliance. Going forward, the primary focus will be to identify and address sources of infiltration, which are the primary source of permit violations. All facility improvements have been funded by shareholder cash equity infusions in combination with deferred accounts payable to AWT.

Thomas Astbury described the proposed new service area (“Proposed Area”). Petitioner’s Proposed Area includes all of the Prairie Acres subdivision and Commercial Park, extending in all directions from this area. Specifically, the Proposed Area extends North of County Road 600, South of County Road 500, West of US 31, and East of Prairie Acres. A map and legal description of the proposed service area was offered as Petitioner’s Exhibit TA-5. Thomas Astbury explained why the Proposed Area is appropriate for Petitioner. Petitioner’s goal is to increase its economies of scale through customer acquisition in order to solidify its finances. This would allow Petitioner to resolve environmental compliance issues while keeping rates stable and affordable. The entire Proposed Area is on relatively flat ground, allowing extension of the collection system in any direction in an economical manner to serve future customers. The North area of the Proposed Area will be negatively impacted by the Indiana Department of Transportation’s (“INDOT”) US 31 Bypass project. However, the service areas to the South of County Road 500, to the East of US 31, and to the West of the Prairie Acres Subdivision are more likely to experience growth and require sewer service. The entire Proposed Area lies outside of municipal boundaries and existing sewer utility CTAs.

Thomas Astbury explained that sewage disposal service is needed in the Proposed Area. The residents of the Prairie Acres Subdivision rely on Petitioner’s continued service. Tipton County has a high proportion of failing septic systems due to the impermeability of area soil. In many cases, future development will rely exclusively on sewage treatment facilities as, under current standards, septic systems are inappropriate. There are several houses to the South and East of the Prairie Acres Subdivision that are on septic systems. It is possible that many of these septic systems are failing or will experience problems in the future. In addition, to the West of US 31, the Kelley Family Agricultural Museum has an inadequate septic system and could, at some point, need to be connected to Petitioner’s sewer system.

Thomas Astbury commented on the costs incurred by Petitioner to provide service to the Proposed Area. The entirety of the Prairie Acres subdivision and Commercial Park can be served largely by utilizing the existing collection system at minimal cost. To serve areas in the Proposed Area, Petitioner will incur costs to construct connecting collection system lines and lift stations, if necessary. Since the Proposed Area has minimal elevation changes, few lift stations will be necessary, reducing service area expansion costs. Beyond a certain point, a wastewater treatment facility expansion would be necessary. Petitioner has studied this possibility and has determined that sufficient ground exists to double or triple treatment facility capacity in an economical manner.

Thomas Astbury testified that Petitioner has the financial ability to render the proposed sewage disposal service in the Proposed Area. If Petitioner implements the proposed rates set forth in the testimony of Patrick Callahan to cover operating expenses, Thomas Astbury foresees the ability to obtain capital from equity and/or debt sources. Both Daniel Astbury and Thomas Astbury indicated their willingness to make shareholder contributions to support Petitioner. Thomas Astbury's Personal Guarantee (as required by 170 IAC 8.5-3-3) was offered as Exhibit TA-3. His personal financial statement was offered into evidence in Cause No. 43916, *In the Matter of JLB Development, Inc.*

Thomas Astbury testified he has the technical and managerial expertise to manage and operate Petitioner. Thomas Astbury has technical and managerial experience through serving as President of JLB, a small sewer utility located in Westfield, Indiana, and by his association with AWT. His technical expertise will be augmented through Petitioner's continued delegation of treatment system operations and maintenance to AWT, which has over thirty (30) years of experience operating small and large sewer and drinking water utilities.

Thomas Astbury testified that AWT has and will be providing operation and management services to Petitioner under a written contract. A copy of the contract was offered as Attachment TA-4 to Exhibit TA. Thomas Astbury stated that the contract will be filed with the Commission as an affiliate contract when Petitioner is authorized to provide sewer service.

Thomas Astbury stated that Petitioner is now charging a \$40.00 per month sewer user rate. Petitioner is proposing a flat rate structure of \$118.80 per customer unit per month. The proposed rates are necessary to cover recurring operation and maintenance expenses. Thomas Astbury explained the proposed rates do not provide Petitioner with a return on the value of its utility property. Petitioner did not seek to earn a return to minimize rate shock and promote customer growth.

Thomas Astbury testified Mr. Callahan's Adjustment No. 2 increases Petitioner's operating expenses to reflect the Operation and Maintenance Contract with AWT. As part of its agreement with Petitioner, AWT is providing all aspects of wastewater treatment system operation and maintenance, including: the provision of a certified operator of record; five weekly site visits; all required on-site testing; all required off-site testing; on-site telemetry system monitoring fees; annual calibration of the effluent flow meter; monthly IDEM paperwork; personnel on standby for the provision of emergency site visits; the coordination of all contractors, including sludge hauling, chemical deliveries, and specialized repair work; correspondence with IDEM; recommendations for system upgrades and/or repairs; the provision of Sodium Bicarbonate, if necessary to control pH fluctuations; routine preventative maintenance; and ground maintenance of the gravel-covered areas the treatment facility. Thomas Astbury explained the services provided under the AWT contract are necessary for several reasons. In particular, AWT's significant expertise in bringing treatment systems into compliance with IDEM is desirable. AWT has a good working relationship with IDEM and has a track record of improving environmental compliance in an efficient manner. AWT is able to provide the services of skilled certified operators to small systems like Petitioner in an economical manner by spreading its resources over several systems in a geographical area. This allows small utilities like Petitioner to receive the services of well-qualified individuals at an affordable rate. In addition, by providing all aspects of treatment system operations in a single package, communication and coordination is maximized. Further, AWT can coordinate necessary facility repairs and maintenance by its in-house staff of technicians. Thomas Astbury explained the

charges to Petitioner associated with the AWT contract are reasonable. AWT is charging Petitioner a below-market rate for its services.

Thomas Astbury stated Mr. Callahan's Adjustment No. 3 is an increase to Petitioner's Operating Expenses to reflect a contract with a billing company. Petitioner has contracted with Michiana Operations, Inc. ("Michiana") to provide monthly billing and collection services. The base fee for this service is \$5.00 per customer per invoice. In Petitioner's case, the fee adds up to \$270.00 per month (54 customers). The following services are provided by Michiana as part of their base monthly fee to Petitioner: generating and mailing bills on a monthly basis; receiving, posting, and remitting payments to Petitioner; late notice letters to accounts which are 60/90/120 days past due; customer service for calls regarding balances, billing questions, etc.; and changes to customer database due to changes in ownership, etc. Mr. Astbury testified the service provided by Michiana is necessary and its fees are reasonable.

Thomas Astbury stated Mr. Callahan's Adjustment No. 4 is an increase to Petitioner's Operating Expenses to reflect an increase in insurance costs. Petitioner had been under-insured from a liability standpoint. In fact, the policy Petitioner had did not cover property damage or loss. The liability and property insurance was passed on to Petitioner through AWT's insurance plan at cost.

Thomas Astbury explained Mr. Callahan's Adjustment No. 5 is a fee from AWT for the preparation of Federal and State Tax Returns. Since Petitioner is a "C" Corporation, it is required by law to submit annual Federal and State Tax Returns. In consultation with Mr. Callahan and AWT Chief Financial Officer, Kathryn B. Astbury, it was determined that a flat \$1,000 fee was reasonable given the time expended to properly complete such documents.

Thomas Astbury testified that Mr. Callahan's Adjustment No. 6 proposes an increase to Petitioner's Operating Expense to reflect annual sludge removal and cleaning of the polishing ponds. The polishing ponds are the final step of treatment at Petitioner's facility. They allow any solids in the water to settle because they serve to retain the effluent flow for a period of approximately two days. The ponds accumulate a significant amount of solids over time. Periodically, it is necessary to have these ponds pumped-down so that the solids can be loaded into a tanker truck and disposed of per IDEM regulations. Bryan Klein, Petitioner's previous owner and its long-time certified operator indicated that the ponds require cleaning at least every ten years. However, it has been five years since the last cleaning (November 2007), and both ponds have accumulated a significant amount of solids, indicating that they probably need to be cleaned more frequently than once every 10 years. Thomas Astbury explained that if too many solids are allowed to accumulate in the ponds, permit violations occur. Sludge removal and pond cleaning are a reasonable and necessary part of maintaining this type of treatment plant. The ponds were last cleaned by Merrell Brothers, Inc., which is an independent biosolids processing company. In AWT's past experience, the rates charged by Merrell Brothers are reasonable and typical within the wastewater treatment industry.

Thomas Astbury described Petitioner's ten-year operational and financial plan. The plan is to stabilize Petitioner so that it can provide necessary sewage treatment services to the area at a fair rate and in a way that is beneficial to the environment. The plan includes: allowing for Petitioner to legally operate under the supervision of the Commission; funding necessary facility upgrades and repairs to return to environmental compliance; providing for collection system and treatment facility

expansion to meet future customer base growth; and operating as efficiently and economically as possible to enable reasonable service rates. A ten-year financial feasibility study has been completed and is part of the Testimony of Patrick Callahan as Appendix A.

Thomas Astbury explained Mr. Callahan's tariff proposed several Non-Recurring Charges, including a Dishonored Check Charge and a Reconnect Charge. The Dishonored Check Charge applies in any instance when payment from a customer of Petitioner is dishonored. The Reconnect Charge applies when a customer wants to reestablish utility service to their property following a disconnection. Utility service will be disconnected when a customer becomes significantly delinquent via installation of a valve box near where a customer's sewer lateral reaches Petitioner's collection system. If this device is not already installed, Petitioner will solicit two bids from qualified contractors; Petitioner will choose the contractor with the lowest qualified bid to install the valve box, which will enable a disconnection of service. If a customer wants to reestablish service, they will have to reimburse Petitioner for the cost of valve box installation (if not already incurred) plus the cost to re-open the valve enabling service to resume. Thomas Astbury explained that because all of Petitioner's customers are on well water, Petitioner has no way to discontinue sewer service. The only way to discontinue service is to install a valve on the sewer lateral. By soliciting at least two bids from qualified contractors, the customer is assured of having this item installed at a reasonable cost. The only other alternative to discontinuing service to Petitioner's customers would be to excavate and plug a sewer lateral. Subsequent reconnections and disconnections under this scenario would yield far more in expenses for customers in the long run. As for the Dishonored Check Charge, Petitioner is only seeking to cover costs that it incurs from its banking partner and billing contractor when a customer's payment is dishonored.

B. Direct Testimony of Daniel Astbury. Petitioner's Corporate Secretary, Daniel Astbury, described his educational background and work experience. Daniel Astbury has been President and CEO of the Astbury Group from 1984 until present. Since 2004, Daniel Astbury's primary focus has been AWT, which employs over 35 full-time equivalent employees and provides services relating to the operation and maintenance of drinking water and wastewater facilities and environmental monitoring projects. AWT has offices in northwest and northeast Indiana, and its headquarters is in Indianapolis. The company provides services throughout Indiana and surrounding states. AWT provides water treatment expertise, specialized environmental field services, and environmental compliance consulting to industrial, commercial, and government clients. The company specializes in turnkey operation of industrial and sanitary wastewater facilities, specialized environmental field studies, and working with clients and regulatory agencies to achieve and maintain environmental compliance.

Daniel Astbury described his involvement with Petitioner. On November 10, 2009, Thomas Astbury and Daniel Astbury acquired all of Petitioner's outstanding stock. Daniel Astbury serves as the corporate Secretary of Petitioner. As a shareholder of Petitioner, he will participate in management of the entire operation. Daniel Astbury will be especially involved in operation, maintenance, and upgrading the wastewater treatment system. He will also be involved in the business side of the operation including billing, accounts payable, and accounting. As an investor, Daniel Astbury has access to the capital required to maintain and upgrade the facilities as necessary. Daniel Astbury's duties will include ongoing operation of the plant including oversight of certified operators, routine sample collection and reporting, maintenance, and plant upgrades. He will also be involved in all communication with the IDEM.

Daniel Astbury described how his training and experience qualify him to manage Petitioner's operations. Daniel Astbury has specific expertise in the management and operation of wastewater facilities, especially small plants of this type. He is generally recognized as an expert in the field of optimizing operation of packaged wastewater treatment plants to achieve and maintain compliance. Daniel Astbury's many years of business experience include forming new companies and managing them for profit and growth. He has never been associated with a company that failed or declared bankruptcy and has a well-earned reputation for making timely payment of all obligations.

Daniel Astbury described his financial resources available to provide equity financing for Petitioner. Daniel Astbury has significant financial resources at his disposal and is willing to apply those resources to the financing of Petitioner. His personal financial statement was treated as confidential and offered into evidence in Cause No. 43916.

C. Direct Testimony of Patrick Callahan. Patrick Callahan, a Certified Public Accountant, described his education and work experience as a utility accountant. Mr. Callahan graduated from Franklin College in 1980 with a B.A. in Accounting and Business Administration. In May, 1982, Mr. Callahan began his employment with the Accounting Department of the Commission. In that capacity, he was responsible for evaluating the financial condition along with the rate requests of all types of utilities under Commission jurisdiction. Mr. Callahan is currently the President of Callahan CPA Group, P.C., a firm which provides utility accounting services to a variety of clients, including a number of utilities regulated by the Commission.

Mr. Callahan described his analysis and revenue requirement study, and his determination of an appropriate monthly user rate. Although Petitioner is a for-profit utility corporation, Petitioner's request in this Cause does not include any revenue requirements for return on the fair value of its rate base. At this time, Petitioner is only requesting sufficient rates and charges to recover the operation & maintenance expenses, depreciation expense and taxes. Mr. Callahan provided Petitioner's requested revenue requirements, requesting an initial authorized monthly flat rate of \$118.80. This will provide annual revenues of nearly \$77,000 for Petitioner.

Mr. Callahan explained the financial rate study. The financial rate study consists of two sections. The first section is the historical financial information of Petitioner. Pages 1 and 2 present the historical financial information, which were taken from Petitioner's books and records. The second section of the financial rate study is the pro-forma information with projections. The financial projections are based on historical information and anticipated occurrences that are fixed, known, and measurable, and will occur within twelve months following the test year. These financial projections present, to the best of management's knowledge and belief, Petitioner's expected results of operations for a twelve-month period.

The comparative balance sheet is presented as of December 31, 2010 and 2011. The comparative income statement presented on page 2 reflects the results of operations for the calendar years 2010 and 2011. As presented on the comparative income statement, Petitioner experienced losses for both years. Petitioner will require \$76,973 annually to satisfy its operation & maintenance, depreciation, and tax requirements. Petitioner's annual normalized present rate revenues are \$25,920, leaving a shortfall of \$51,053. Therefore, the present monthly flat rate of \$40.00 will need to be increased to \$118.80 to eliminate the shortfall.

Mr. Callahan explained the adjustments needed to normalize the operating revenues based on the number of active accounts. Currently, Petitioner has fifty-four (54) customers connected to the collection system paying a fixed monthly flat rate of \$40.00. Adjustment No. 1 will reduce annual revenues by \$400. This adjustment is necessary because Petitioner continued to bill three units for three months in error. These homes were sold to INDOT in 2011 and are now vacant. INDOT has purchased these homes and some of Petitioner's land to construct the new bypass in the Kokomo area.

Adjustment No. 2 provides the current cost of the Operation & Maintenance ("O&M") Contract with AWT. The AWT contract will provide the services of a Certified Operator, who will conduct five weekly plant visits, perform routine O&M tasks, conduct on-site testing, collect routine samples and analysis, provide annual flow meter calibration, provide monthly fees for the alarm notification system, prepare monthly reports to the IDEM, respond to any IDEM correspondence, and provide on-call personnel for emergencies. The monthly charge for the O&M contract is \$2,222.

Adjustment No. 3 provides the normalization for billing costs. Petitioner has contracted with a billing company to provide billing services. The billing charge is \$5.00 per customer per month for fifty-four customers or \$3,240 annually.

Adjustment No. 4 reflects the pro-forma liability insurance expense of \$983, and an adjustment of \$128 will be required to normalize the test year expense.

Adjustment No. 5 reflects an increase in professional fees. Mr. Callahan included the cost to prepare monthly financial statements at \$100 per month, or \$1,200 per year. Petitioner will be required to complete and file the Commission Annual Report and the cost is \$500. Additionally, Petitioner will be required to prepare, and file with the Department of Local Government Finance ("DLGF"), the Utility Property Tax Return. The annual cost to complete and file the tax return with DLGF is \$350. Mr. Callahan estimated the cost of preparing the state & federal income tax returns at \$1,000 per year. The total annual expense for all of these professional fees is \$3,050.

Adjustment No. 6 addresses the cost to remove sludge and clean and dredge the polishing pond. Petitioner will have to remove sludge from its treatment plant four times per year. The cost each time is \$450; thus \$1,800 has been included annually for sludge removal. The cost of sludge removal was \$1,987 in 2010 and \$555 in 2011. Due to the rainfall in 2011, the sludge removal was less because the rain washed away much of the sludge in the plant that would normally be hauled away. Additionally, Petitioner will have to periodically (every 10 years) clean-out and dredge the polishing pond. In 2008, the previous owners spent \$20,305.81 to clean and dredge the polishing pond.

Adjustment No. 7 is the amortization of the rate case expense. Petitioner has spent \$7,580 so far for rate consulting and legal fees. This amount is recorded as a deferred debit on its balance sheet as shown on page 1. It is anticipated that Petitioner will spend an additional \$7,500 and \$15,000 for rate consultant and legal fees, respectively, to complete this Cause. The total rate case expense of \$30,080 has been amortized over five years resulting in an annual amortization of \$6,016.

Adjustment No. 8 reflects the annual IURC fee. Once Petitioner receives its Certificate of Territorial Authority (CTA) and approval of new rates, Petitioner will be required to pay the annual IURC fee. The current IURC fee is 0.117851% and when applied to Petitioner's current annual revenues results in an annual expense of \$31.

Adjustment No. 9 is the pro forma depreciation expense. Petitioner's utility plant of \$389,718 is reduced by land cost of \$1,379 to determine the depreciable utility plant in service. The depreciable plant of \$388,339 is depreciated at a composite rate of 2.5%, producing a revenue requirement of \$9,708 for depreciation expense.

Adjustment No. 10 reflects a utility receipts tax ("URT") of 1.4% on Petitioner's operating revenues. When the 1.4% URT rate is applied to the normalized operating revenues as determined in Adjustment No. 1, the URT expense is \$363 annually. No URT was paid in the test year.

In Adjustment No. 11, Mr. Callahan calculated the annual property tax expense for Petitioner at \$4,293. Once Petitioner receives its CTA and approved user rates from the Commission, Petitioner will file Form 45 with the DLGF which will be utilized for their property tax assessment. The current property tax rate is \$1.5441 per \$100 of assessed value.

Adjustment Nos. 12 and 13 represent Petitioner's corporate state and federal income taxes, respectively. Because the present rate net operating income statement reflects a loss under both scenarios, no provisions for state and federal income taxes are included. Both scenarios show a net operating loss of \$50,278 at the present rates.

Mr. Callahan explained that Petitioner's previous accountant provided a detailed list of utility plant in service and respective costs as of December 31, 2008. Mr. Callahan included the necessary additions and retirements of utility plant that have occurred over the past couple of years to calculate the used and useful utility plant. Mr. Callahan calculated utility plant in service of \$389,718 and net original cost rate base of \$272,007. Mr. Callahan proposed that for purposes of this proceeding, the net original cost utility plant in service be assumed to equal to its fair value. Mr. Callahan explained that because Petitioner is not seeking to earn a return of the fair value of its utility property at this time, Petitioner wants to avoid the expense and delay resulting from a potentially contested fair value determination in this case.

Mr. Callahan made several adjustments to Petitioner's utility plant in service. Mr. Callahan deducted \$13,227 from Petitioner's utility plant in service to account for utility plant that may have been funded by customer contributions. He deducted \$899 due to INDOT's purchase of a fraction of land (.458 acres) from Petitioner for the proposed construction of the Kokomo bypass. The old flow meter has been replaced; therefore, \$4,526 was eliminated from the utility plant. Pumping equipment of \$6,235 has been either retired or replaced by Petitioner; therefore, it has been removed from Petitioner's utility plant. Lastly, the Sewer Line TV could not be verified; therefore, it was eliminated from Petitioner's utility plant.

The rate base was further reduced by the accumulated provision for depreciation resulting in a net utility plant in service of \$264,768. Adding the working capital component of \$7,239, the total fair value rate base is \$272,007.

Mr. Callahan proposed two non-recurring charges to be included on Petitioner's tariff. These non-recurring charges include a dishonored check charge and a reconnection fee, which would include the charges for disconnection and reconnection of service consistent with 170 IAC 8.5-2-4(f). Petitioner is proposing to charge a dishonored check charge of \$38.50. Currently, the bank charges Petitioner \$11.00 for each check that is returned. Petitioner's billing contractor charges \$55.00 per hour for services rendered in addition to their routine contractual duties. Mr. Callahan estimated that the billing company will spend one-half hour communicating and providing correspondence to customers.

Petitioner is also requesting permission to charge a disconnect fee and reconnect fee, all under a Reconnect Charge. Many sewer utilities have the ability to disconnect a customer's water service when a disconnection of sewer service is warranted. Petitioner cannot do so because all of its customers are on wells. In the event it becomes necessary to disconnect a customer, Petitioner is requesting that a fee be available for the excavation of the sewer line and installation of a valve and valve box. This will allow the services to be turned off and easily restored. Petitioner proposes to obtain two bids from reputable and experienced contractors in the area. The lowest bid will establish the cost of the disconnect fee. The cost of the contractor and the cost of material (valve and valve box) will be assessed to the customer and/or homeowner at actual cost. The disconnect fee (contractor charge and material costs) along with any unpaid charges for service will have to be paid before service is restored. Although this situation may be an unusual occurrence, it is important that all customers receiving Petitioner's services, pay in a timely fashion. With only fifty-four (54) customers, it is imperative all customers pay for services rendered.

Mr. Callahan explained the reconnection portion of the Reconnect Charge. When the customer wants to be reconnected after the services are disconnected, Petitioner will have to send one of its employees to reconnect the service. The hourly rate for such service is \$35.00 per hour. Based on the time to drive, reconnect, and complete paperwork, it is assumed that it will take a minimum of one hour of staff time to accomplish the reconnect. Additionally, Mr. Callahan included \$10.20 for transportation costs (twenty (20) miles at \$0.51/mile). He also included one-half of one hour for administrative time. At a cost of \$55.00 per hour for administrative time, Mr. Callahan included \$27.50 in the reconnect charge. A reconnect charge of \$72.70 will be imposed. The Reconnect Charge will be the total disconnection charge, as previously explained, and the \$72.70 reconnection charge, as explained above. The Commission's Rule, 170 IAC 8.5-2-4(f), requires that the charges for disconnection and reconnection be combined as a reconnection charge.

Petitioner is requesting approval of a CTA from the Commission. As required in Section 1(1)(c) of 170 IAC 8.5-3-1, Petitioner is required to submit a ten-year feasibility study to the Commission. Specifically, it requires Petitioner to prepare pro-forma financial statements along with the proposed user rates and non-recurring charges. Mr. Callahan provided a ten-year pro-forma balance sheet and a ten-year pro-formal income statement.

D. Supplemental Testimony of Thomas Astbury. Mr. Astbury explained that AWT technicians, including Mr. Astbury, conducted an audit of the sanitary collection system to determine sources of inflow and infiltration. During this investigation, Petitioner smoke tested individual manholes and looked at each residential connection to the sanitary collection system to determine if gutters and downspouts were illegally connected. As part of its project, an aerial map of the Prairie Acres subdivision was utilized. When counting the number of units connected to the sanitary collection system, a discrepancy was discovered. Petitioner recorded fifty-eight

connections as opposed to the fifty-four units Petitioner was billing at the time. One of the four residential units has been in foreclosure for an extended period of time and is unoccupied. This residence was not included as an additional customer.

Mr. Astbury explained the addition of three customers will require changes to the Petitioner's case in this Cause. Mr. Astbury asked Petitioner's rate consultant, Mr. Callahan, to review his rate report and make any changes necessary to reflect the three additional customers. Mr. Callahan has modified his rate report and exhibits to reflect the three additional customers and has prepared his Verified Supplemental Direct Testimony and Revised Exhibits.

E. Supplemental Testimony of Patrick Callahan. Mr. Callahan revised the customer revenue normalization adjustment to account for the three additional customers. Mr. Callahan first added the revenues from these three customers and adjusted the IURC fee and the utility receipts tax expense. Mr. Callahan eliminated the recovery of the deferred rate case expense accrued during the transition of ownership to Petitioner based on a request from the OUCC. After these revisions, Petitioner is requesting an increase of \$48,257 annually, an increase of 176.4% over the current revenue level. This results in a monthly user rate of \$110.55, which is an increase of \$70.55 over the current \$40.00 per month rate. Mr. Callahan also submitted a revised tariff, reflecting the \$110.55 monthly rate.

6. OUCC's Case-in-Chief.

A. Direct Testimony of Richard J. Corey. Mr. Corey, a Utility Analyst in the OUCC's Water/Wastewater Division, opined that Petitioner had satisfied the financial requirements for a sewer CTA. It would appear that Petitioner has provided the exhibits required by 170 IAC 8.5-3-1 relating to the application for a certificate of authority. Mr. Corey's only concern with the documentation was that the feasibility study provided indicated that Petitioner would incur a net operating loss for at least the next ten years, causing a question of whether Petitioner will be able to continue as an ongoing concern. However, also included in the documentation are personal guarantees provided by the two principals of the corporation, along with personal financial statements that indicate they control sufficient capital to fund Petitioner's operation for the indeterminate future.

Mr. Corey summarized the OUCC's review of Petitioner's requested relief. Mr. Corey explained OUCC Schedules 4, 5 and 6 provide detail of pro forma amounts and adjustments to test year amounts. OUCC Schedule 4 is the pro forma net operating income statement. It shows the test year revenues and expenses, the adjustments to test year amounts, and the resulting pro forma amounts under current rates. OUCC Schedule 4 also shows the revenue increase or decrease necessary to achieve the required net operating income. It also shows the expenses that will change due to the change in revenue. OUCC Schedule 5 provides the detail for pro forma revenue items, and Schedule 6 the detail for pro forma expense items that needed to be adjusted from test year amounts.

Mr. Corey accepted Petitioner's normalization adjustment to Revenues. Additionally, he accepted Petitioner's adjustments to Billing Contract Expense, Liability Insurance Expense, Professional Fees, Sludge Removal Expense and Depreciation Expense. Mr. Corey increased wastewater service revenues by \$1,440 (\$40 x 12 months x 3 customers) to include the annual revenues from the three additional households identified by Petitioner. Mr. Corey explained that

Petitioner agreed to remove \$7,580 in unamortized rate case expense that was incurred prior to the test year. Additionally, Petitioner has represented that it has incurred a total of \$19,800 in legal fees, \$7,220 of which represents work done on Petitioner's CTA. Therefore, Mr. Corey adjusted the rate case legal fees to \$12,580 and added the CTA cost to rate base. Finally, Mr. Corey reclassified a \$745 capital item from repair expense to utility plant, and made a corresponding adjustment to depreciation expense.

Mr. Corey explained that in calculating its pro forma utility receipts tax, Petitioner simply multiplied the pro forma proposed gross receipts increase by 1.4% to calculate pro forma utility receipts tax. The Indiana Department of Revenue allows each utility to take a \$1,000 exemption when calculating utility receipts tax. Therefore, Mr. Corey included the \$1,000 exemption in his calculation. Mr. Corey also explained that throughout its filing Petitioner uses an IURC fee rate of .117851%. The correct IURC fee rate for fiscal year 2012-2013 is .120313%. Mr. Corey reflected the current IURC fee rate in his schedules. Petitioner estimated its property tax adjustment based on the value of utility plant less depreciation times the 2011 property tax rate. Subsequent to its case-in-chief filing, Petitioner provided a copy of its property tax bill for 2012, which indicated its property tax liability would be \$358.32. The OUCC adjustment reflects the updated tax liability.

Mr. Corey explained his concerns regarding Petitioner's proposal to exclude income tax as a revenue requirement to minimize rate shock. Based on the feasibility study attached to the pre-filed testimony of Mr. Callahan, Petitioner will incur a net operating loss for at least ten years. A net operating loss can be carried forward and used to offset taxable income in future tax years. Additionally, Mr. Corey said that Petitioner could at any time convert to a Subchapter S corporation which would allow the principal(s) to use these losses to offset income in other endeavors on their personal tax return. For these reasons, Mr. Corey believes that the tax benefit from the ongoing net operating loss should be reflected in Petitioner's rates.

Mr. Corey did not agree with Petitioner's gross revenue conversion factor. Petitioner proposed a gross revenue conversion factor of 1.015400 for its Utility. Mr. Corey proposes a gross revenue conversion factor of 1.307500. The differences between these two proposals is due to the updating of the IURC fee to reflect the 2012-2013 rate of .120313%, and the inclusion of the State and Federal income tax rates.

Mr. Corey audited Petitioner's books and records and reviewed invoices and other documentation that represented more than 92% of the utility plant in service as of December 31, 2011. He feels confident that the balance of the original cost rate base of the utility plant in service is reasonably represented in Petitioner's filing. Mr. Corey explained the OUCC's calculation of working capital differs from Petitioner's. Due to various expense adjustments, the OUCC's calculation of Petitioner's working capital differs by \$389.

Mr. Corey did not find Petitioner's proposed \$38.50 dishonored check charge to be unreasonable. However, Mr. Corey expressed concern with Petitioner's proposed reconnect charge. Mr. Corey said that Petitioner's proposal to take bids be taken from local contractors on a case by case basis to establish the cost of the disconnection could result in an inconsistent charge each time it becomes necessary to disconnect sewer service. He feels Petitioner should provide cost-based documentation that would support a specific charge for the disconnect/reconnect fee through a 30-day filing prior to approval of the reconnection charge.

B. Direct Testimony of Harold Rees. Mr. Rees, a Senior Utility Analyst in the OUCC's Water/Wastewater Division, identified the following operational issues that existed before the current owners purchased the utility and the actions taken by Petitioner to address them:

1. A lack of continuous on-site monitoring by the operators. Prior to the current ownership, Petitioner lacked the benefit of regular on-site monitoring by certified operators. Under new ownership, Petitioner has established a schedule so that the treatment system is visited a minimum of five times per week by the certified operators of Astbury Water Technology, Inc., the maintenance and operations contractor. In addition to performing the supervision and operations functions, AWT personnel are available to accomplish repairs and upgrades as necessary. Further, Petitioner has installed a cellular-based auto-dialer system to notify on-call operators of equipment issues.

2. Unreliability of the AC power service. Prior to the current ownership, power outages shut down the operations of the utility. Power outages caused the blower and pump motors to quit or be damaged, which deprived the biomass of Dissolved Oxygen. The new ownership has improved the electrical service to the facility, which should resolve this problem. In addition, Petitioner has improved the ventilation in the blower building to eliminate premature blower shut-down due to high temperature.

3. Improper operation of the original flow meter. Prior to the current ownership, the original flow meter was not operating properly. The new owners have installed a new downloadable flow meter with an output that allows for communication between components of the treatment facility. The blowers are now wired to the flow meter so that they shut down during high flow periods.

4. The Chlorine tablet disinfection unit was antiquated and unreliable. Prior to the current ownership, the chlorine disinfection process did not work properly, resulting in E.coli permit violations. To resolve this issue, the new owners of Petitioner installed an ultraviolet ("UV") disinfection system at the final flow metering area.

5. There had been ongoing Phosphorus violation issues. Prior to the current ownership, Petitioner was experiencing ongoing phosphorus violations. The new ownership performed a conversion from granular Aluminum Sulfate to liquid Ferric Chloride treatment. The chemical feed for the Aluminum Sulfate was intermittent while the upgrade of the chemical delivery system allows for a continuous feed of the liquid Ferris Chloride.

6. There had been frequent effluent dissolved oxygen permit violations. Prior to the current ownership, Petitioner was experiencing ongoing dissolved oxygen permit violations. In 2010, the new ownership placed an aeration diffuser in the final area of the flow metering basin which resolved the problem.

Mr. Rees discussed other operational issues that still need to be addressed. The OUCC recommends that Petitioner continue to evaluate the collection system to determine sources of inflow and infiltration and make the necessary repairs. Mr. Rees stated Petitioner does not have a back-up generator for its treatment plant. However, Petitioner informed the OUCC that AWT can procure a rental generator in the event of an extended power outage, which could be wired to the electrical system of the treatment plant. Petitioner also utilizes "Intellalert" telemetry to monitor the

wastewater treatment facility for potential issues such as power outages. This system, which is equipped with back-up batteries, will call and email the responsible AWT personnel if there is a power failure.

Mr. Rees said that after reviewing the service contract and reading Mr. Astbury's testimony, it appears that Petitioner's contract with AWT is providing the appropriate level of service to properly operate and maintain Petitioner's facilities and maintain compliance with its IDEM NPDES Permit. It also appears that the monthly contract fee may be reasonable, when considering the amount of services provided and when comparing the Petitioner contract to AWT's operations contract at INDOT's Lanesville Welcome Center wastewater treatment plant. However, Mr. Rees said that the cost of the AWT contract appears to be cost prohibitive when considering the number of customers receiving service (57) and the total proposed monthly rate of \$118 per customer. A \$118 monthly rate would be one of the highest, if not the highest Commission-approved wastewater rate in the State. The AWT contract fee is Petitioner's largest operating expense (\$26,666 per year) and contributes significantly to the proposed 197% rate increase to \$118 per month. The proposed AWT contract fee is more than all the revenues collected by Petitioner in the test year. Given all these facts, the customers may suffer from rate shock if the full cost of the AWT contract is included and the proposed rate increase is approved.

At this time, the OUCC recommends approval of the cost associated with the AWT contract. However, the OUCC recommends that Petitioner seek cost estimates from at least two other unaffiliated operation and maintenance service providers or from the closely located municipalities (Sharpsville and Kokomo) to determine whether the cost of the current AWT contract is reasonable. This information should be provided to the OUCC and the Commission.

Mr. Rees determined Petitioner's existing sludge removal process to be adequate. While Petitioner indicates that sludge hauling is required approximately four times per year, the number of sludge haulings per year can vary. For example, Petitioner stated in the data request response that in another year, sludge removal might not be required at all if the digester is empty at the beginning of the year. As a result, Mr. Rees recommends a more conservative and reasonable estimate of three sludge removals per year at a savings in annual expenses of \$450.

Mr. Rees supports Petitioner's proposal for the operating expenses to clean and remove sludge from the polishing ponds. This is not to be confused with the sludge removal process and budget amount for the periodic removal from the digester tank (the old metal tank for the package plant) which was previously discussed. This item is relative to the polishing ponds as discussed in Mr. Astbury's testimony. Mr. Rees has no objection to amortizing the expense associated with sludge removal from the polishing ponds at least every ten years.

7. **Kokomo's Case-In-Chief.** Chris Cooper, Superintendent of the Wastewater Treatment Plant for Kokomo, testified regarding Kokomo's position on Petitioner's request to expand its CTA.

Mr. Cooper said that Kokomo has an interest in the successful economic development of the Kokomo area as well as the statutory authority to serve the area contained within Petitioner's requested CTA. The successful development of the Route 31 corridor can only occur if there is adequate sanitary sewer infrastructure, adequate treatment facilities and capacity, adequate administrative and staff capacity to service the sewer needs of commercial, industrial, and

residential development, and the ability to do so at a reasonable cost for service. The failure to properly plan for this growth may keep the Kokomo area from achieving maximum potential.

Mr. Cooper is uncertain whether Petitioner has made an adequate showing of its ability to operate under a CTA and expand into additional territory. He stated he is not sure based on the testimony that Petitioner has provided sufficient information regarding an expansion of its current imputed CTA. While Kokomo does not oppose the CTA application of Petitioner for its original service area, it asks that the Commission seriously explore the expansion area which could preclude further growth by Kokomo's sewer utility.

8. Petitioner's Rebuttal.

A. Rebuttal Testimony of Thomas Astbury. Thomas Astbury addressed the concerns raised by Mr. Cooper. He disagrees with Mr. Cooper's unsupported suggestion that Petitioner might impede customer growth in the proposed CTA area due to a lack of human and financial resources. He said Petitioner can ensure that future customer growth in the proposed CTA will be adequately served. Petitioner has demonstrated, through previous testimony detailing its significant operation and financial resources, that Petitioner is just as capable as the City of Kokomo to serve Petitioner's proposed CTA area. The Astburys' financial resources are more than adequate to enable the funding of infrastructure, including collection system and treatment facility expansion, if necessary. As a private enterprise, Petitioner is also capable of constructing necessary infrastructure more rapidly than a municipality as its corporate structure allows for quicker decision making and deployment of financial resources. A municipality, on the other hand, would presumably need to issue municipal bonds and go through multiple layers of sewer board, city council and/or mayoral approval for an infrastructure build-out.

Petitioner is proposing to serve an area larger than the Prairie Acres subdivision and commercial park in order to increase its economies of scale. As evidenced by Patrick Callahan's recent Supplemental Direct Testimony, the discovery of only three additional customers effectively reduced our rate request from approximately \$118.00 to \$110.00 per month. With only fifty-seven customers, Petitioner would benefit immensely from the addition of even a few new customers. Reducing the size of Petitioner's proposed CTA, as suggested by Mr. Cooper, will diminish the likelihood of Petitioner acquiring much needed new customers. Following Petitioner's efforts to reduce inflow and infiltration to its collection system, adequate treatment capacity will exist, enabling Petitioner to serve a significant amount of new customers without expanding its current treatment facility. The opportunity for an increased customer base located in Petitioner's proposed CTA would allow Petitioner to spread its costs over a larger base, reducing the need for future rate increases and strengthening Petitioner's financial resources. Petitioner is committed to serve the area contained within its proposed CTA. The fact that sewer service provided by Petitioner is available in this area should encourage potential development.

B. Rebuttal Testimony of Patrick Callahan. Mr. Callahan does not completely agree with Mr. Corey's findings in his testimony and exhibits. Attached to Mr. Callahan's testimony is the prepared Schedule PC-1 comparing his revenue requirements to Mr. Corey's. Mr. Callahan disagreed with Mr. Corey on rate case expense. Mr. Corey is correct in his statement that Petitioner has agreed to eliminate \$7,580 of rate case expense incurred prior to the test year. However, the legal fees incurred as of August 31, 2012 are \$19,800 (\$7,220 for Petitioner's CTA and \$12,580 for rate case legal fees). Mr. Corey failed to include the legal fees

that will be incurred to complete this Cause. Mr. Callahan believes \$5,000 should be included in the rate case expense for these additional legal fees. Mr. Callahan then allocated 50% of the legal fees required to complete this case (\$2,500) to the rate case expense. Therefore, Mr. Callahan's legal fees for rate case expense are \$15,080.

Mr. Callahan explained his concern regarding property taxes. He agrees with Mr. Corey's use of the most recent tax rate, however he fails to include a significant component of Petitioner's property tax calculation. Once the Commission grants the Petitioner its CTA and a new schedule of rates and charges, Petitioner will be required to file State Form 40408 (U.D. Form 45) prescribed by the DLGF. This form is used by the DLGF for property tax assessment for utilities and requires the utility plant in service be stated at original cost. To calculate property taxes, the original cost utility plant in service is reduced by the accumulated provision for depreciation. The original cost utility plant may be reduced by either tax depreciation or book depreciation. In the process of preparing his prefiled direct testimony and supplemental testimony, Mr. Callahan assumed that Petitioner's tax accountant would use book depreciation for the preparation of Petitioner's federal tax return. However, after reviewing the federal tax return, Mr. Callahan realized tax depreciation, not book depreciation, was utilized. Therefore, Mr. Callahan reduced Petitioner's utility plant in service of \$389,718 by the tax accumulated provision for depreciation of \$306,258. This results in a net plant of \$83,460. However, DLGF regulations require Petitioner to use the greater of the federal tax return net plant or 30% of its utility plant in service. Thirty percent of Petitioner's utility plant is \$116,915 (\$389,718 times 30%); therefore, Mr. Callahan calculated the property tax expense on the \$116,915.

Mr. Callahan explained his disagreement with Mr. Corey regarding the state and local income tax expenses. Mr. Corey asserts that Petitioner can use the net operating loss carried forward and offset taxable income in the future tax years. Although Mr. Corey's assertion is correct, it doesn't appear these losses will be utilized any time soon. Petitioner must earn a profit to make use of any past losses and Petitioner's proposed rates are not designed or expected to generate a profit. Indeed, it is not likely Petitioner will make a profit during the life of the proposed rates. Based on the facts today, it doesn't appear the tax benefits will be realized any time in the foreseeable future, and should not be deducted from the revenue requirements.

Mr. Callahan prepared a revised monthly flat user rate. Mr. Callahan determined Petitioner's revised monthly flat rate to be \$105.25. As discussed earlier, Mr. Callahan has increased Mr. Corey's rate case expense by \$500 annually, increased Mr. Corey's property tax adjustment by \$1,395, and eliminated his tax benefit of \$1,276.

9. Commission Discussion and Findings.

A. CTA. Under Ind. Code § 8-1-2-89(e), the Commission shall issue a CTA for rural sewer service if it finds that the applicant has proved: (1) lawful power and authority to apply for a CTA and to operate a sewage disposal utility; (2) financial ability to install, commence, and maintain a sewage disposal utility; and (3) public convenience and necessity require the rendering of the proposed service in the proposed rural area by the applicant. 170 IAC 8.5-3-1 requires an application for a CTA to include, among other documents, articles of incorporation, a legal description of the sewage disposal plant site, a ten-year feasibility study and pro forma financial statements, a personal guarantee by a principal of the corporation; a legal description of the area to

be served, a letter of approval from IDEM or the state department of health, and maps of the proposed service area.

Petitioner submitted a certified copy of its Articles of Incorporation, certified as of March 19, 2012, and a Certificate of Existence for Petitioner, certified by the Indiana Secretary of State. Based on this evidence, we find that Petitioner has the lawful power and authority to apply for the CTA and to operate a sewage disposal utility.

Thomas and Daniel Astbury submitted evidence demonstrating their extensive, collective experience, the expertise of AWT, and their personal financial statements. In addition, Thomas Astbury submitted a Personal Guarantee to provide working capital to support Petitioner for a period of five (5) years, as required by 170 IAC 8.5-3-1(D). Although Kokomo questioned Petitioner's financial ability to serve the proposed CTA area, we find no evidence in the record supporting this claim. In fact, the evidence shows that Petitioner has already invested significant resources into the utility and has plans for further improvements. Therefore, based on the evidence, we find that Petitioner has the financial ability to install, commence, and maintain, a sewage disposal utility in the proposed CTA area.

The evidence shows that Tipton County generally has a high rate of failed and failing septic systems due to the soil impermeability. There are several existing homes to the South and East of the Prairie Acres Subdivision that currently use septic systems, and the Kelley Family Agricultural Museum has a failing septic system. Should those septic systems fail, Petitioner could provide sewage disposal service through its system. In addition, the INDOT US 31 Bypass Project has the potential to bring new development into the Proposed Area. However, such development would likely require the availability of a sewage treatment facility, because it may be difficult to obtain permits for septic systems. Finally, allowing Petitioner the opportunity to expand its operation and acquire new customers, will likely have a positive impact on the high rates paid by existing customers by spreading the costs of service over a wider customer base. Therefore, based on the evidence, we find that public convenience and necessity require the rendering of sewer service in the proposed area by Petitioner.

Petitioner's evidence in this case included the following as required by 170 IAC 8.5-3-1: a map and legal description of the proposed service area and the location of the wastewater treatment facility; Petitioner's Articles of Incorporation; Petitioner's NPDES Permit; a description of the treatment plant; the notices required by 170 IAC 8.5-3-1(F); and a site map showing Petitioner's disposal facility and grounds.

Based on our discussion above, we conclude that Petitioner has satisfied all of the requirements of Ind. Code § 8-1-2-89 and 170 IAC 8.5-3-1. Therefore, we grant Petitioner a CTA to render sewage disposal service to the public in the Proposed Area described by the map and legal description in Petitioner's Exh. TA-5.

B. Rates. Petitioner is not requesting a return on the fair value of its used and useful utility property in this case. Therefore, Petitioner's rates will be calculated on the basis of its test-year expenses and adjustments.

(1) Rate Base. Although we need not determine the value of Petitioner's utility property for purposes of calculating return on rate base, the net original cost of Petitioner's

property is an input to Petitioner's property tax calculation. Mr. Callahan testified that after removal of any amounts that might have been customer contributions, Petitioner's net original cost rate base is \$272,007. Mr. Corey reviewed invoices and other documentation representing more than 92% of Petitioner's utility plant in service as of December 31, 2011. He expressed his confidence that Petitioner has reasonably represented the original cost rate base of the utility plant in service. No other party challenged Petitioner's rate base calculation. Therefore, based on evidence, we find that Petitioner's net original cost rate base, as of December 31, 2011, is \$272,007, and the fair value of Petitioner's used and useful property, as of December 31, 2011, is not less than \$272,007.

(2) **Petitioner's Operating Revenue at Present Rates.** Mr. Callahan testified that Petitioner's test year operating revenue was \$26,320. Mr. Callahan reduced that amount by \$400 to correct a billing error. In his Supplemental Testimony, Mr. Callahan increased pro forma present rate revenues by \$1,440 to account for three newly discovered customers, making the pro forma present rate revenues \$27,360. Based on the evidence, we find that Petitioner's pro forma present rate operating revenue is \$27,360.

(3) **Operation and Maintenance Expenses.** Both Mr. Callahan and Thomas Astbury made adjustments to O&M expenses. Mr. Callahan testified that the cost of the AWT operation and maintenance contract in the test year was \$26,666. Mr. Callahan also adjusted test year expenses to include Billing Contract Expense, Liability Insurance Expense, Professional Fees, and Sludge Removal Expense. Mr. Corey accepted those adjustments. Mr. Corey calculated a different amounts for the IURC fee because he used the most recent rate, and Mr. Callahan accepted this adjustment.

Mr. Corey originally proposed an adjustment to Petitioner's rate case legal fees, which he calculated to be \$12,580. In his Rebuttal Testimony, Mr. Callahan pointed out that Mr. Corey had used Petitioner's legal fees incurred as of August 31, 2012, including nothing for legal fees to be incurred to complete this Cause. Mr. Callahan testified that Petitioner expected to incur an additional \$5,000 to complete the work in this Cause. After allocating the \$5,000 between rate case expense and CTA activities, Mr. Callahan calculated a rate case legal fees of \$15,080. On cross-examination, Mr. Corey accepted Mr. Callahan's rebuttal adjustment. Therefore, the total rate case expense, including \$7,500 for rate consulting fees is \$22,580, amortized over five years.

Based on the evidence and our discussion above, we find that Petitioner's annual pro forma Operation and Maintenance expenses are \$59,372.

(4) **Depreciation Expense.** Mr. Callahan initially proposed \$9,708 for Petitioner's depreciation expense. Mr. Corey proposed \$9,908, because of the recategorization of some expenses. On rebuttal, Mr. Callahan accepted Mr. Corey's calculation. Therefore, we find that Petitioner's annual pro forma depreciation expense is \$9,908.

(5) **Taxes Other than Income Taxes.** Mr. Callahan estimated Petitioner's property tax expense because its most recent tax statement was not yet available. Mr. Corey adjusted Petitioner's property tax expense calculation to include the most recent property tax statement. On rebuttal, Mr. Callahan updated his calculation and proposed a property tax expense of \$1,753. Mr. Callahan originally proposed \$1,078 for Petitioner's Utility Receipts Tax expense. However, Mr. Corey pointed out that Petitioner would be entitled to a \$1,000 exemption when

calculating utility receipts tax. On rebuttal, Mr. Callahan, after incorporating the exemption and additional revenues from the three newly discovered customers, recalculated the Utility Receipts tax at \$949. Therefore, based on the evidence, we find that Petitioner's pro forma annual Taxes Other than Income Taxes expense is \$2,702.

(6) **Income Taxes.** Mr. Callahan initially proposed a \$0 income tax expense for Petitioner because Petitioner's rates are not calculated to earn a profit. Mr. Corey made adjustments to both State and Federal Income Tax on the basis of his assertion that Petitioner's net operating losses could be carried forward and used to offset taxable income in future tax years. Mr. Corey also stated Petitioner could convert to a Subchapter S corporation, which would allow the principals to use Petitioner's losses to offset other income. Mr. Corey believes that the tax benefit from Petitioner's operating losses should be reflected in Petitioner's rates.

We do not agree with Mr. Corey. The evidence in this case shows that Petitioner is unlikely to earn a profit in the next ten years. Mr. Corey's arguments that Petitioner could use net operating losses as a carry forward offset to future income or could convert to a Subchapter S corporation are purely speculative and do not represent fixed, known, and measurable adjustments to Petitioner's annual expenses. Therefore, we find that Petitioner's annual, pro forma income tax expense is \$0.

(7) **Revenue Requirement and Authorized Rates.** Based on the findings above, Petitioner's annual, pro forma revenue requirement is calculated as follows:

Operation and Maintenance Expense	\$59,372
Depreciation Expense	9,908
Taxes Other than Income Taxes	2,702
Income Tax Expense	<u>0</u>
Pro forma Revenue Requirement	<u>\$71,982</u>

Therefore, we find that Petitioner should be authorized to implement rates and charges for sewer service calculated to produce annual revenues of \$71,982, which is an increase of \$44,622, or approximately 163.1%, over current pro forma, annual operating revenues of \$27,360. A residential customer, who currently pays a monthly flat rate of \$40.00, will see an increase of \$65.25, based upon the proposed monthly flat rate of \$105.25.

C. **Petitioner's Customer Benefit Adjustment.** During the Evidentiary Hearing, in response to cross-examination questions from the OUCC, Mr. Callahan proposed a Customer Benefit Adjustment ("CBA") that would automatically adjust Petitioner's rates if Petitioner experiences an increase in the number of customers. If Petitioner's customer base increases, Petitioner will adjust the sewer rates approved in this Cause by dividing the total revenue requirement approved in this Cause by the number of equivalent dwelling units ("EDUs") where one EDU is equal to the average monthly effluent flow of a single family dwelling.

Petitioner currently has fifty-seven residential customers (57 EDUs). Under Petitioner's proposal, automatic rate adjustments would occur when the customer base reaches 62 EDUs, 69 EDUs, and each 10 EDU increase thereafter (i.e. 79 EDUs, 89 EDUs, etc.). Within thirty days of reaching one of these benchmarks, Petitioner would calculate the new sewer rate and submit its calculations to the OUCC. No sooner than thirty (30) days, but not longer than sixty (60) days, after

making its submission to the OUCC, Petitioner would file a revised tariff reflecting the new sewer rate with the Water and Wastewater Division of the Commission. If the calculation is accurate, the Water and Wastewater Division would approve Petitioner's proposed tariff without further proceeding or order. If the proposed calculation is not accurate, the Water/Wastewater Division would work with Petitioner and the OUCC to correct the error. Petitioner would then file a corrected tariff for approval by the Water/Wastewater Division.

Both the Petitioner and the OUCC support the approval of Petitioner's CBA, and, the CBA has the potential to reduce user rates by spreading Petitioner's costs over a greater number of customers. However, we do not believe we have the authority to approve the proposed CBA. Petitioner cites Ind. Code § 8-1-2-61.5(d) and (e), which gives the Commission the ability to approve alternative regulatory plans and procedures for water and sewer utilities. However, Petitioner correctly notes that a party seeking alternative regulatory relief must specifically request such relief in its petition and include a citation to the statute in the caption of the cause. Relief under Ind. Code § 8-1-2-61.5(d) and (e) was not plead or noticed in this Cause. Therefore, it would be inappropriate for us to approve such relief based upon a proposal first presented in cross-examination testimony at the evidentiary hearing.

Petitioner also cites Ind. Code § 8-1-2-24, which allows the utility to enter into "any reasonable arrangement with its customers ... providing for a sliding scale of charges or other financial device that may be practicable and advantageous to the parties interested." This statute is not applicable to the proposed CBA, because it is not an arrangement that Petitioner has reached with its customers. Rather, the CBA is a proposal that was agreed to by Petitioner and the OUCC. While the OUCC represents the interests of the public, and thus Petitioner's ratepayers, in this case, it may not act on their behalf by binding them to an arrangement with the utility.

Despite our inability to approve the CBA, we find that the concept behind the adjustment is sound and would likely be beneficial to consumers. Because very small changes in Petitioner's total customer count would likely result in material reductions in per user sewer rates, we find it is reasonable for Petitioner to seek a new schedule of rates at regular intervals of new customer growth. But, to do so through a regular docketed rate case would be cost prohibitive. However, we note that Petitioner qualifies to seek rate relief under Ind. Code § 8-1-2-61.5(a) and 170 IAC 14, ("Small Utility Procedure"). By utilizing our Small Utility Procedure, Petitioner can greatly reduce its costs to seek a new schedule of rates. In addition, because ex parte rules do not apply to the Small Utility Procedure, Petitioner would be able to seek guidance from the Commission's Water/Wastewater Division Staff in preparing its request. In most cases, no hearing is required in these cases, and rate changes can be approved in about three months. Further, utilizing the Small Utility Procedure will allow the Commission to consider any other changes to Petitioner's system that may impact rates, such as capital improvements that might be necessary to serve the additional customers.

Petitioner proposed a schedule of rate changes after the net addition of five customers. In light of our discussion above, we conclude that if Petitioner achieves a net addition of five customers (62 EDUs), Petitioner shall file for a change in rates using the Small Utility Procedure. To the extent, Petitioner achieves continued customer growth, we may order Petitioner to continue to seek rate changes through our Order in the Small Utility Procedure case.

D. Non-Recurring Fees and Charges. Petitioner proposed a fee for dishonored checks. Mr. Callahan provided cost justifications for the Dishonored Check Charge. Mr. Corey testified that he reviewed Petitioner's cost-based documentation and did not believe the charge was unreasonable. We find that the evidence supports the amount of the charge. Therefore, we approve Petitioner's Dishonored Check Charge.

Petitioner also proposed a reconnect charge, which would include the charges for disconnection and reconnection of a service consistent with 170 IAC 8.5-2-4(f). Because the system does not have shut off valves at customer locations, in order to disconnect a customer for nonpayment, Petitioner must excavate the sewer line, and install a valve and valve box. Petitioner proposed to obtain two bids from reputable contractors in the area, the lowest of which will establish the cost of the disconnection. The cost of material, the valve and valve box, would be assessed at actual cost. Mr. Corey opposed Petitioner's proposed disconnect/reconnect charge. Mr. Corey expressed concern that Petitioner's proposal could result in inconsistent charges each time a disconnection is required. Mr. Corey recommended that Petitioner seek approval of a disconnect/reconnect charge through the Commission's 30-day filing process.

Petitioner's proposed Reconnect Charge would be based on actual costs incurred; however, Petitioner did not provide any actual cost-based evidence. The OUCC raised concerns about potential inconsistency of reconnect charges between customers. The OUCC proposed that Petitioner assemble a cost-based fixed charge and pursue the Thirty Day Filing procedure. Petitioner did not oppose Mr. Corey's recommendation. We agree with the OUCC, and decline to approve Petitioner's Reconnect Charge at this time. We invite Petitioner to present a proposed Reconnect Charge with cost-based evidence for approval through the Commission's 30-day filing process.

E. OUCC Recommendations. Mr. Rees recommended that Petitioner should seek cost estimates from at least two unaffiliated operation and maintenance service providers, or from the closely located municipal sewer providers (Sharpsville and Kokomo) to determine whether the cost of the current AWT Contract is reasonable. Mr. Rees proposed the resulting information be provided to the Commission and OUCC. Petitioner did not oppose Mr. Rees' recommendation.

Within sixty days of the date of this Order, Petitioner shall request estimates to provide operation and maintenance services for Petitioner from at least Sharpsville and Kokomo. In making the inquiries to Sharpsville and Kokomo, and any others, Petitioner should provide a description of the scope of work under the AWT contract so that the resulting estimates are for comparable services. Within ten days after receiving any estimate, Petitioner shall file the estimate with the Commission under this Cause and serve a copy upon all parties.

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

1. Prairie Utilities, Inc. is granted a Certificate of Territorial Authority to provide sewage disposal service to the public in a rural area of Tipton County, Indiana, which area is more particularly described by the legal description and map attached to the Verified Application and set forth in the evidence. This Order shall constitute the Certificate of Territorial Authority.

2. Prairie Utilities, Inc. is authorized to implement rates and charges for sewage disposal service so as to produce total annual operating revenues of \$71,982, which is an increase of \$44,622 over pro forma present rate test year operating revenues of \$27,360.

3. Prairie Utilities, Inc. is authorized to implement the Dishonored Check Charge of \$38.50.

4. Prairie Utilities, Inc. shall comply with the OUCC Recommendation to request estimates for operation and services for Petitioner Utilities, Inc. and provide those estimates to the Commission and Parties consistent with our discussion in Finding 9.D. above.

5. Prior to placing into effect the rates and charges approved above, Prairie Utilities, Inc. shall file new schedules of rates and charges with the Water/Wastewater Division of the Commission on the basis set forth above. Such rates and charges for wastewater service will become effective upon approval by the Water/Wastewater Division of the Commission and shall cancel all prior rates and charges.

6. In the event that Prairie Utilities, Inc. achieves customer growth of a net five customers (62 EDUs), it shall file for a change in rates using the Commission's Small Utility Procedure. The Customer Benefit Adjustment proposal is denied.

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

ATTERHOLT, BENNETT, LANDIS, MAYS AND ZIEGNER CONCUR:

APPROVED: MAR 14 2013

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



Brenda A. Howe
Secretary to the Commission