

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF THE TOWN OF)
CEDAR LAKE FOR APPROVAL OF) CAUSE NO. 44173
THE ISSUANCE OF LONG TERM)
NOTES, BONDS OR OTHER) APPROVED:
OBLIGATIONS) AUG 15 2012

ORDER OF THE COMMISSION

Presiding Officers:
Carolene Mays, Commissioner
Gregory R. Ellis, Administrative Law Judge

On March 30, 2012, the Town of Cedar Lake, Indiana ("Petitioner" or "Cedar Lake") filed with the Indiana Utility Regulatory Commission ("Commission") its Petition and prefiled testimony and exhibits constituting its Case-in-Chief requesting authority to issue long term notes, bonds and other obligations. While Cedar Lake is not seeking a change to its present rates and charges, in compliance with the Settlement Agreement approved by the Commission in Cause No. 43655, Petitioner's filing includes a rate analysis by its utility accountants. On May 17, 2012, Petitioner filed certain corrections to its prefiled testimony and exhibits.

On June 25, 2012, Petitioner filed exhibits consisting of a borrowing resolution adopted by the Cedar Lake Town Council authorizing the loan from the wastewater utility and the Town of Cedar Lake's bond ordinance (Ordinance No. 1158). On July 5, 2012, Petitioner filed Supplemental Testimony presenting a revised Rate and Financing Analysis to reflect the potential participation of Cedar Lake in the upcoming Indiana State Revolving Fund ("SRF") pooled debt issuance. On July 5, 2012, the Indiana Office of Utility Consumer Counselor ("OUCC") prefiled the testimony of Mr. Edward R. Kaufman.

Pursuant to notice given and published as required by law, proof of which was incorporated into the record of this Cause by reference and placed in the official files of the Commission, the Commission held an evidentiary hearing on July 12, 2012, at 10:30 a.m., in Room 224, 101 West Washington Street, Indianapolis, Indiana. Cedar Lake and the OUCC were present and participated. No members of the general rate paying public appeared or sought to testify in the evidentiary hearing. During the hearing, the parties offered their respective prefiled testimony and exhibits into evidence, which were admitted into the record without objection. The parties also provided testimony indicating that they had reached a settlement of all issues in the case.

Based upon the applicable law and the evidence of record, the Commission finds as follows:

- 1. Notice and Jurisdiction. Due, legal and timely notice of the public hearing conducted by the Commission in this Cause was given and published as required by law. Cedar

Lake owns and operates a “municipally owned utility” as defined in Ind. Code § 8-1-2-1(h) and is subject to the jurisdiction of the Commission in the manner and to the extent provided by laws of the State of Indiana. Ind. Code §§ 8-1-2-42 and 8-1.5-3-8 require Commission approval of Petitioner’s rates and charges. Accordingly, the Commission has jurisdiction over the Petitioner and the subject matter in this Cause.

2. **Petitioner’s Characteristics.** Petitioner is a municipality that owns and operates plant and equipment within the State of Indiana for the production, transmission, delivery, and furnishing of water to the public within and around the Town of Cedar Lake, Indiana. The utility consists of two distinct service areas which were formerly served by Utilities, Inc. and Robins Nest Water Company, Inc. (“Robins Nest”).

3. **Background.** In June, 2009, Cedar Lake acquired the water utility assets in Cedar Lake formerly owned by Utilities, Inc. In December 2010, Cedar Lake acquired the water utility formerly owned by Robins Nest. As a result of these two acquisitions, Cedar Lake owns and operates a municipally owned utility. Cedar Lake’s acquisition of the Utilities, Inc. assets was approved to the extent necessary by this Commission’s Order dated April 29, 2009 in Cause No. 43655. That Order approved a Settlement Agreement pursuant to which Cedar Lake was required to file information which included a rate analysis by its utility accountants for purposes of determining whether the rates and charges could thereafter be changed within twelve months of said Order issuance. On or about April 14, 2010, Cedar Lake filed a Motion for Extension of this requirement, based in part on the grounds that Cedar Lake was at that time in the process of acquiring the Robins Nest assets and would prefer to have a full twelve months of operation before filing a rate analysis. On April 14, 2011, Cedar Lake Officials met with representatives from the Commission and the OUCC to discuss a further delay of the submission of a rate analysis. The agreement among the participants of the meeting was that Cedar Lake would not file a rate case at that time but that Cedar Lake would file a rate case with the Commission no later than March 31, 2012. While Cedar Lake is not seeking a change to its present rates and charges, the Petition in this Cause was filed pursuant to that commitment.

In order to close on the acquisitions of Robins Nest and Utilities, Inc. and to make certain improvements to its newly acquired water utility, consisting of an extension so as to provide municipal water service on the western edge of the community along U.S. Highway 41, Cedar Lake has issued bond anticipation notes (“BANs”) in the amount of \$1,750,000, which have a term expiring on December 14, 2012. Cedar Lake reasonably needs to issue long term debt to provide permanent financing for these improvements and acquisitions.

4. **Relief Requested.** Cedar Lake’s Petition seeks authority to issue water works revenue bonds not to exceed \$1,339,000 via the open market that would be payable over a term not to exceed twenty (20) years. As a result of conversations with the SRF, assuming that certain time constraints can be met, Petitioner now intends to participate in the SRF’s pooled debt issuance in October 2012.

In addition to the bonds, Cedar Lake seeks authority to borrow \$230,000 on a five-year term from Cedar Lake’s wastewater utility. The Petition explains the remaining balance of the BANs will be repaid with cash on hand. In this fashion, the BANs can be replaced with

permanent financing without necessitating an increase to water rates. The principal and interest on the new waterworks revenue bonds and the principal on the loan from the wastewater utility will be payable solely from future revenues of Petitioner's waterworks. Petitioner's loan from the wastewater fund will be interest free. Petitioner does not seek a general change in its schedule of rates and charges at this time.

5. Cedar Lake's Evidence. Cedar Lake's Town Administrator, Ian Nicolini, testified on behalf of Petitioner regarding the relief requested and offered a description of the water utility owned by Cedar Lake and investments Cedar Lake has made to acquire and construct the utility. He explained that Cedar Lake's water utility consists of two distinct service areas which were formerly served by Utilities, Inc. and Robins Nest. He explained the circumstances leading to Cedar Lake's acquisition of these utility assets. He testified that the areas of greatest potential commercial growth in Cedar Lake, the U.S. 41 corridor on the west side of Cedar Lake and the downtown area of 133rd Avenue and Morse on the east side, were served only by private wells. He testified that Utilities, Inc. was thinly capitalized and did not intend nor have the ability to provide water services to the U.S. 41 Corridor and that the Norfolk and Southern Railroad line separated the areas of available water service and the U.S. 41 Corridor. This effectively served as a barrier to the water utility expansion and economic development potential. The costs and responsibilities borne by private businesses which must maintain a private well were often cost-prohibitive and severely hampered the potential for economic development opportunities. Therefore, the Cedar Lake Town Council determined that in order to encourage economic development, Cedar Lake should acquire the assets of Utilities, Inc. in order to make service available.

Mr. Nicolini described the potential for savings within the existing rates charged by Utilities, Inc. that would allow Petitioner to make the necessary investments and extensions to encourage economic development in the area. He explained that Cedar Lake does not have to pay many of the taxes that Utilities, Inc. must pay, can borrow money at tax exempt rates and is eligible for financing through the SRF. In addition, Mr. Nicolini noted, Cedar Lake already operates the sanitary sewer utility which serves the entire town as well as several unincorporated areas, allowing Petitioner to provide additional benefits to the rate payers and untapped potential customers by using existing billing, clerical, and public works staff. He also noted that Cedar Lake could use other economic development incentives to encourage private developers to finance and install additional improvements and expansions to the water system.

Mr. Nicolini then described the circumstances leading to the acquisition of the Robin's Nest utility assets. He explained that Robin's Nest was the closest water utility in proximity to the downtown commercial corridor at 133rd Avenue and Morse. He described the plans for a water main extension, to be completed in the first half of 2012 by a private developer through an economic development agreement, to provide water services to a new healthcare facility and multi-faceted retail service station. He noted the extension will extend water to within one hundred feet (100') of the intersection of 133rd Avenue and Morse, which would create potential to serve dozens of prospective high-volume commercial customers. He testified that by leveraging private development investment and tax increment financing, this expansion will be completed with no impact on existing rates. Mr. Nicolini also described the extension along 129th Avenue for which part of Petitioner's temporary financing was incurred.

Although the Rate and Financing Analysis presented by Cedar Lake Witness Haase calculates a rate increase is supported, Mr. Nicolini explained that a critical assumption in Petitioner's planning has been that the Town would accomplish its objectives without asking water customers or Cedar Lake citizens who are not water customers to pay an increase. Mr. Nicolini explained that as Petitioner's utility grows, it may seek to consolidate to a single rate structure, but that is not necessary at this time. He explained the Town has shown its continual commitment to preserving rates, achieving synergies, and using economic incentives to leverage private and public investments to expand services within the framework of existing rates and without disproportionately impacting other non-rate payer taxpayers.

Pamela Sue Sargent Haase, a Partner with London Witte Group LLC, also testified on behalf of Petitioner. Ms. Haase sponsored the Rate and Financing Analysis, as revised ("Analysis"), which analyzed Petitioner's current pro forma revenue requirement and the proposed debt issuance. The proposed debt issuance presented in Ms. Haase's initial Analysis consisted of waterworks revenue bonds with a twenty (20) year term in principal amount of \$1,339,000, as well as an interest free loan in the amount of \$230,000 from the Cedar Lake sewer utility payable over a term of five (5) years. She explained that the remaining funds to repay the outstanding BANs will come from cash on hand.

Ms. Haase testified that although the Analysis supports an increase in Petitioner's current rates and charges of 5.50%, as reflected in Petitioner's Exhibit PSH-1 – corrected, the Cedar Lake Town Council has declared that no increase will be requested or implemented at this time. She explained that the proposed debt has been specifically structured so that the new waterworks revenue bonds can be issued on parity with Petitioner's existing debt without raising rates. She stated that a ten (10) year Operational Analysis indicates that Petitioner's cash flows based on certain assumptions using the current rates and charges will service both the existing and proposed debt, including the five (5) year wastewater utility short-term loan payback, while providing a sufficient cash balance for working capital.

Ms. Haase noted that while the analysis contains the financial results inclusive of information pertaining to both of the acquired utilities, the unadjusted test year results of operations contains only eleven months of billings for the previous Robins Nest customers while twelve (12) months of expenses are included, due to the timing of the Robins Nest acquisition. She explained that test year revenues were adjusted for the additional month of billings for the Robins Nest customers. Ms. Haase described the other revenue and expense adjustments in the Analysis, resulting in net operating revenues of \$48,337.

Ms. Haase testified that Petitioner currently has a BAN outstanding in the amount of \$1,750,000 maturing on December 14, 2012. She stated the funds borrowed were used for the Robins Nest acquisition, the 129th Avenue water main extension and to provide capital funds for improvements to water utility infrastructure. She explained the BAN was originally procured in December 2010 and was paid off and a new BAN procured in December 2011. She stated Petitioner decided to enter into short-term financing for the above uses in order to allow the previous fiscal year's results of operations to include the Robins Nest financial results and to capture any financial results of growth in the system. Ms. Haase testified that given the decrease

in previous growth rates and the incurrence of issuance costs every time a financing is entered into (whether it is long or short term), it has been determined to enter into a long term debt arrangement when the current BAN matures.

Ms. Haase explained that Petitioner has three outstanding debt issues that have been issued on parity with each other. She described the existing bond covenants which require a debt coverage ratio, when an increase in the current rates and charges (revenues) is not being contemplated, of at least 1.25 times (industry minimum) the maximum annual debt service of all existing and proposed debt issues. She indicated that based on her calculation of the estimated maximum annual debt service of the current and proposed debt results in a debt coverage ratio of 1.35 which fulfills the bond covenants' minimum coverage requirement of 1.25 times.

Ms. Haase described the proposed interest free loan from the Cedar Lake wastewater utility with a term not to exceed five years. She explained Petitioner will enter into this inter-departmental borrowing as a subordinate obligation to both the existing and proposed debt issues. Thus, payments of the existing and proposed debts are and will remain first liens against operating revenues after payment of operating expenses.

Ms. Haase explained that although the Analysis showed that the existing rates will not be sufficient to fund the complete revenue requirement, Petitioner believes that its water utility is poised for growth and that new connections will generate sufficient additional revenues that will allow Cedar Lake to fully fund its expenses and obligations. To the extent that growth is less than projected, she stated there are items that Petitioner can cut temporarily without jeopardizing service. For instance, she stated, it does not need to make annual payments on the interfund loan, which does not come due for five years. Further, the water utility has not been paying annual office rent or its portion of group insurance. Ms. Haase stated that temporarily this arrangement could continue if revenues fall short of the amount needed. Ms. Haase's Analysis indicates that assuming a conservative increase for revenue growth, a Consumer Price Index based increase to operating and capital improvements expenditures, current year debt payments, and the wastewater loan repayment, Petitioner does maintain annual debt coverage at or slightly above the required 1.25 coverage, without dedicating system development charges.

6. Petitioner's Supplemental Testimony and Exhibits. On July 5, 2012, Petitioner filed Supplemental Testimony of Ms. Haase, indicating that Petitioner and the OUCC had reached a settlement in principle and revising the Analysis to reflect Petitioner's anticipated participation in the October 2012 SRF pooled debt issuance. Ms. Haase explained that in the revised Analysis attached to her Supplemental Testimony, she assumed that the time constraints for participation in the SRF's pooled debt issuance can be met. She testified that by participating in the SRF's pooled debt issuance, Petitioner can avoid \$25,000 of issuance costs and benefit from the State of Indiana's AAA rating in determining the applicable interest rate, thus lowering its interest costs over the life of the debt issuance by \$216,865, resulting in improved debt coverage ratios (1.40 at present rates). Ms. Haase's revised Analysis indicated that the proposed amount of the SRF bonds would be \$1,314,000.

7. OUCC's Testimony. Edward R. Kaufman, Senior Analyst with the OUCC testified on behalf of the OUCC that after reviewing Petitioner's filing and Petitioner's 2011

Annual Report, the terms of Petitioner's proposed loans appear reasonable and consistent with current market rates. He recommended the Commission grant Petitioner authority to issue the proposed debt subject to certain debt service reserve reporting requirements as described below. He testified that the Commission's expedited treatment of Petitioner's requested relief in this Cause, allowing for Cedar Lake's participation in the SRF's pooled loan program, will result in a lower interest rate for Petitioner's proposed 2012 revenue bonds.

Mr. Kaufman recommended that the Commission impose a requirement that if Petitioner spends any of the funds from its debt service reserves for any reason other than to make the last payment on the debt service reserve's respective loan, Petitioner should be required to provide a report to the Commission and the OUCC within five (5) business days. Mr. Kaufman also recommended Petitioner be required to notify the Commission and the OUCC if it fails to make its required contribution to its debt service reserve funds. Cedar Lake agreed to this condition on the record at the hearing.

8. Commission Discussion and Findings. The evidence of record indicates that the Parties have provided the Commission with sufficient information to determine that the public interest is served by approving Cedar Lake's Petition. Specifically, participation in the SRF program, Petitioner's preferred funding source, and the interfund loan from Cedar Lake's wastewater utility described herein are advantageous and necessary, in the public interest and in the interest of Petitioner and its customers. Even if Cedar Lake is unable to participate in the SRF program, we find Petitioner's requested financing to be reasonable. Accordingly, we find that Petitioner should be authorized to issue up to \$1,339,000 in water works revenue bonds and to borrow up to \$230,000 from Cedar Lake's wastewater utility, interest free, for a term not to exceed five years.

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

1. The Town of Cedar Lake, Indiana, shall be and is hereby authorized to issue water works revenue bonds in an amount up to \$1,339,000, and to borrow \$230,000 on a five-year term from its wastewater utility.

2. In the event that Petitioner spends any of the funds from its debt service reserves for any reason other than to make the last payment on the debt service reserve's respective loan, Petitioner shall file a report in this Cause within five (5) business days stating: (1) the amount Petitioner spent from its debt service reserve(s); (2) the reason for the expenditure of funds from its debt service reserve(s); (3) a cite to any applicable loan documents that allow Petitioner to spend funds from its debt service reserve(s); (4) a description of Petitioner's plans to replenish its debt service reserve(s); and (5) a description of any cost cutting activities Petitioner has implemented to forestall spending funds from its debt service reserve(s). Petitioner shall also notify the Commission and the OUCC through a filing in this Cause if Petitioner fails to make its required contribution to its debt service reserve funds.

3. Petitioner's existing base rates and charges shall remain unchanged.

4. In accordance with Ind. Code § 8-1-2-85, Cedar Lake shall within thirty (30) days of receipt of the bond proceeds authorized herein submit to the Secretary of the Commission a fee of twenty-five cents (\$0.25) for each \$100 of the water works revenue bonds issued to be paid into the State Treasury and deposited into the Commission public utility fund.

5. In accordance with Indiana Code § 8-1-2-70, Petitioner shall pay the following itemized charges within twenty (20) days from the date of the Order into the Treasury of the State of Indiana, through the Secretary of this Commission, as well as any additional costs that were incurred in connection with this Cause:

Commission Charges	\$ 1,378.02
OUCC Charges	\$ 1,832.70
Legal Advertising charges	\$ <u>174.33</u>
Total	\$ 3,385.05

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

ATTERHOLT, BENNETT, LANDIS, MAYS AND ZIEGNER CONCUR:

APPROVED: 'AUG 1 5 2012

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



Brenda A. Howe
Secretary to the Commission