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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF)
EASTERN HEIGHTS UTILITIES, INC. FOR)
APPROVAL OF A CERTAIN LEASE UNDER)
WHICH IT WILL RENDER WATER)
UTILITY SERVICE IN PORTIONS OF)
DAVISS, GREENE AND MARTIN)
COUNTIES, AND FOR ADDITIONAL)
RELIEF RELATED THERETO)

CAUSE NO. 44268

APPROVED: APR 24 2013

ORDER OF THE COMMISSION

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

Eastern Heights Utilities, Inc. ("Petitioner" or "Eastern Heights") filed its Verified Petition with the Indiana Utility Regulatory Commission ("Commission") seeking the approval of, and other relief related to, a certain "Lease of Property with Option to Purchase," dated April 19, 2012, (the "Lease").

Pursuant to notice duly published as required by law, proof of which was incorporated into the record by reference and placed in the official files of the Commission, a public hearing was held in this Cause on February 1, 2013, at 10:00 a.m. EST, in Hearing Room 222 of the PNC Center, 101 W. Washington St., Indianapolis, Indiana. At the hearing Petitioner and the Indiana Office of Utility Consumer Counselor ("OUCC") offered their respective testimony and exhibits, which were admitted into the record without objection. No members of the public attended or participated in the evidentiary hearing.

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

1. Statutory Notice and Jurisdiction. Due, legal, and timely notice of these proceedings was given as required by law. Eastern Heights is a "public utility" as defined in Ind. Code ch. 8-1-2. Eastern Heights sought approval of and other relief related to the Lease pursuant to Ind. Code §§ 8-1-2-4, 23, 79, 83, 84, 125, and 36-2-2-23. Therefore, the Commission has jurisdiction over Petitioner and the subject matter in this Cause.

2. Petitioner's Characteristics. Eastern Heights is an Indiana not-for-profit corporation with its principal place of business at 316 N. Washington Street, Bloomfield, Indiana. Eastern Heights currently provides water utility service to approximately 6,795 customers in the incorporated towns of Bloomfield and Worthington, Indiana, and in rural portions of Indiana's Greene, Owen, Monroe, Lawrence, Martin, and Daviess Counties; and owns, operates, manages and controls plant and equipment used for the distribution and furnishing of such services.

3. **Relief Requested.** Petitioner requests the Commission approve and grant other relief related to the Lease that it entered into with Greene County, Indiana, through its Department of Redevelopment, also known as Redevelopment Commission (“GCRC”). Specifically, in addition to approval of the Lease, Eastern Heights requests the Commission find that it has the corporate power and managerial, technical, and financial ability to own and operate the leased facilities; to determine that Eastern Heights’ provision of water utility service within the area to be served by the leased facilities is required by public convenience and necessity and will serve the public interest; and to consent to Greene, Martin, and Daviess Counties granting Eastern Heights licenses, permits, or franchises for the use of county-owned property to provide water utility service in the area.

4. **Petitioner’s Case-in-Chief.**

A. **Corporate Authority.** Charles W. Hirth, Secretary of Eastern Heights’ Board of Directors, testified that on May 7, 2012, Eastern Heights’ Board of Directors (“Board”) adopted a Resolution authorizing its officers to seek appropriate relief from the Commission with regard to the Lease. At the evidentiary hearing, Mr. Hirth presented a copy of the Board’s Resolution authorizing this proceeding along with a copy of the Verified Petition filed by Eastern Heights, which included a signed copy of the Lease.

B. **The Lease.** Kenneth McIntosh, General Manager of Eastern Heights, testified concerning key provisions of the Lease. He explained that the Lease will provide Eastern Heights with exclusive use and control of substantial water storage and distribution facilities that will be constructed within an area commonly known as “West Gate @ Crane Technology Park” (“Park”). Mr. McIntosh pointed out that the facilities being leased to Eastern Heights (the “Leased Facilities”) are described on Exhibit A to the Lease, and the area within which the Leased Facilities will be constructed (the “Service Area”) is shown on Exhibit B to the Lease. Eastern Heights will provide water utility service to all customers within the Service Area on the same terms and conditions, and at the same rates and charges, as it provides to other similarly-situated customers.

Mr. McIntosh explained that the Lease obligates Eastern Heights to pay a monthly rental amount that will never be less than one hundred dollars (\$100) beginning upon Eastern Heights’ acceptance of all or any discrete functional portion(s) of the Leased Facilities. He noted that the Lease requires Eastern Heights to assume responsibility for the repair and maintenance of the Leased Facilities. Mr. McIntosh testified that the Lease also grants Eastern Heights an option to purchase the Leased Facilities at any time during the term of the Lease. However, he explained that the purchase price must be sufficient to retire any outstanding indebtedness incurred in construction of the Leased Facilities. Mr. McIntosh emphasized that Eastern Heights will only exercise this option when, and if, it finds that a purchase is in its best interests and those of its current customers. Mr. McIntosh further stated that in the event Eastern Heights does not exercise its option to purchase the Leased Facilities before the end of the lease term, it has the option to extend the term of the Lease for up to 10 additional years. Further, if Petitioner ultimately chooses not to purchase the Leased Facilities, Mr. McIntosh stated that Petitioner will continue to provide service within the Service Area under the terms of the Lease until such time as other arrangements can be made.

Mr. McIntosh testified that under the Lease terms, GCRC will be responsible for the construction of the Leased Facilities and interconnecting them with Eastern Heights’ existing facilities. He explained that Eastern Heights will be provided with detailed plans and specifications for the Leased Facilities and will be permitted to conduct inspections and investigations of the

Leased Facilities during construction. Mr. McIntosh also testified that Eastern Heights will be involved in the design of the Leased Facilities including determining the appropriate capacities of the components of the Leased Facilities as well as their location. Mr. McIntosh advised that Eastern Heights will be allowed to confirm that the Leased Facilities are adequately designed and constructed prior to accepting them and becoming responsible for their operation, maintenance and repair.

William H. Harp, President of Green County Redevelopment Commission, confirmed the key terms of the Lease. He testified that the GCRC had been directly involved in developing an infrastructure within the Park and that the Lease reflects some of GCRC's efforts in this regard. Specifically, regarding the development of the Leased Facilities, Mr. Harp testified that the estimated cost of construction is approximately \$1.5 million. Mr. Harp explained that in 2011, Utilities District of Western Indiana, Rural Electric Membership ("UDWI") and GCRC submitted an application to the United States Department of Agriculture Rural Development ("Rural Development") through its Economic Development Loan Program for a loan to fund construction of the Leased Premises. Rural Development makes loans to utilities that in turn re-loan the funds to qualified recipients for economic development projects. Mr. Harp further testified that as a result of their collaborative effort, UDWI received approval for a \$740,000 loan, which UDWI has re-loaned to GCRC for the construction of the Leased Facilities. UDWI has also established a Revolving Loan Fund and has agreed to loan GCRC an additional \$300,000 for construction of the Leased Facilities. The two loans secured by GCRC each bear zero percent (0%) interest and a term of ten years. Mr. Harp then testified GCRC has agreed to commit approximately \$500,000 in incremental property tax revenues to fully fund the Leased Facilities. Finally, Mr. Harp indicated that Eastern Heights would not be responsible for any debt service associated with the loans obtained to construct the Leased Facilities. Rather, Mr. Harp explained that Eastern Heights' financial obligations relating to the Leased Facilities are limited to those set forth in the Lease.

Mr. Harp further testified that unlike the Petitioner, GCRC would not operate the leased facilities itself because it has no experience or expertise with the operation of water utility assets and providing water utility services. Mr. Harp further explained that GCRC's operation of the Leased Facilities and provision of water service in the Park would also unnecessarily duplicate Petitioner's service in the area of the Park and prove wasteful. Mr. Harp opined that the Lease should be approved.

C. Capacity. Mr. McIntosh testified that Eastern Heights presently provides approximately 12,000 gallons per day of water utility service to approximately 45 residential and commercial customers within the Service Area. This service includes the provision of water on a wholesale basis to the Town of Crane, Indiana which is also located within the Service Area. Mr. McIntosh explained that the closest water facilities of any other water utility are nearly one mile southwest of the Service Area and would not be adequate to meet the Service Area's current needs. Mr. McIntosh testified that the facilities Eastern Heights currently uses to provide service within the Service Area are able to provide adequate and reliable service to its current customers and handle limited growth within the Service Area.

Mr. McIntosh testified that Eastern Heights serves its present customers within the Service Area from its Bogard Bottoms well field and with a 100,000 gallon elevated storage tank located just northeast of the Service Area in the unincorporated town of Scotland. He further testified that these customer are served through an 8 inch distribution main, which extends from the storage tank

into the Service Area along CR 200 E in Greene County and CR 1400 E in Daviess County. Mr. McIntosh noted that within the Service Area the 8 inch main connects with a 2 inch main extending along Greene CR 800 S and a 10 inch main extending along Daviess CR 1650 N. He stated that there is a 6" main going into the Martin County portion of the Westgate Development Project and that water service to the Town of Crane comes from those same lines.

Mr. McIntosh noted that Eastern Heights understands that the Service Area will be developed over several years and that the demand for water will be as much as 100,000 gallons per day. Moreover, he testified that while the facilities Eastern Heights currently uses are able to provide adequate and reliable service to its current customers and handle limited growth within the Service Area, those existing facilities will not be adequate to meet the projected demand for service within the fully-developed Service Area. In fact, he testified that Eastern Heights' facilities will not be capable of providing the pressure and flow needed for adequate fire protection.

Mr. McIntosh explained that the Leased Facilities will interconnect with and supplement the facilities that Eastern Heights currently uses to provide service within the Service Area and will be essential to Eastern Heights' ability to satisfy the storage and distribution needs that are projected to exist when the Service Area is fully developed. Mr. McIntosh described in detail how the existing and Leased Facilities will work together. The new storage tank for the Leased Facilities will be located at a site in the Service Area along Greene CR 800 S. The 10 inch main to be located in the Leased Facilities will extend from this new tank to the east and interconnect with Eastern Heights' 8 inch main along Daviess CR 1400 E. The 10 inch main located in the Leased Facilities will extend to the west along Greene CR 800 S to Greene CR 25 W and then north along CR 25 W to Greene CR 725 S where it will connect to Eastern Heights' existing 10 inch main extending from the Bogard Bottoms well field. Eastern Heights' 10 inch main will be the primary source of water supplying the new water tank located in the Leased Facilities. Eastern Heights' existing facilities will remain necessary to provide service and will be essential to "looping" within the Service Area.

Mr. McIntosh testified that the water supplied in the Service Area will continue to be supplied primarily from Eastern Heights' Bogard Bottoms well field. He then testified that Bogard Bottoms is currently operating at or near capacity, and while it is able to meet the demand for water in the Service Area for the short term, the well field will need to expand to meet the projected demand in the fully developed Service Area. Mr. McIntosh testified that Eastern Heights plans to expand the Bogard Bottoms well field and has determined that a preliminary estimate for the needed expansion is \$500,000. The estimate reflects the cost of a test well, 500 gallons per minute production well, well structure and platform, chemical feed plant equipment, electrical and telemetry upgrades, standby power capability and connection to the Eastern Heights distribution system. Mr. McIntosh stated that this would be funded by obtaining grant funds and that any portion of the expansion not covered by grant funds would have to be borrowed. Mr. McIntosh concluded that the expansion would allow Eastern Heights to address increased demand for service in other areas as well.

Mr. McIntosh provided additional background information about Eastern Heights' facilities and workforce, as well as its rates and finances. Mr. McIntosh testified that as of May 1, 2012, Eastern Heights provided water utility service to approximately 6,795 customers in the incorporated towns of Bloomfield and Worthington, Indiana, and in rural portions of Greene, Owen, Monroe, Lawrence, Martin and Daviess Counties. He testified that, including his position, Eastern Heights has a total workforce of eleven individuals, with three people performing office functions, and

seven people working as field staff.

Mr. McIntosh further testified that Eastern Heights owns and operates 480 miles of mains, three well fields, three treatment facilities, nine pumping facilities and thirteen water towers and tanks. He testified that Eastern Heights maintains an inventory of materials, vehicles and other mobile equipment for the installation, maintenance and repair of its facilities. Mr. McIntosh testified that there is a control center monitoring Eastern Heights' system and that the headquarters, located in the Town of Bloomfield, has a variety of office equipment. Mr. McIntosh testified that Eastern Heights' current rates and charges were approved in the Commission's April 20, 2006 Order in Cause No. 42839.

Mr. McIntosh testified that in his opinion Eastern Heights' existing workforce and management staff is adequate to handle service to current and anticipated customers within the Service Area. He indicated that Eastern Heights has and will have under the Lease terms access to the facilities needed to provide adequate, reliable service to current customers within the Service Area and to provide for short term growth. He concluded that Eastern Heights has the ability and will make the capital additions to its facilities needed to continue to provide adequate and reliable service in the future as the Service Area develops.

Mr. Harp opined that Petitioner has the capacity to meet the Lease Terms. He testified that Petitioner has been an efficient and cost-effective supplier of water utility service within Green County and surrounding areas for many years, and that in his opinion, increased demand for water service in the Park will not change Petitioner's capabilities, especially in light of its access to the Leased Facilities.

D. Service Area Expansion. Mr. McIntosh testified that approval of the Lease and Eastern Heights' provision of water utility service in the Service Area will promote the public interest. Mr. McIntosh testified that the planned commercial and industrial development within the Service Area cannot occur without the availability of adequate water utility service and that Eastern Heights is best positioned to provide that service in an efficient and cost-effective manner. Mr. McIntosh identified three additional specific reasons that Eastern Heights service will be in the public interest. First, the Lease provides Eastern Heights with access to the facilities it needs to meet the Service Area's demand for water service in the future at an extremely attractive cost that will not burden its existing customers. Second, Eastern Heights' existing customers should ultimately benefit from the development within the Service Area due to Eastern Heights' ability to spread costs over a larger customer base. Third, Eastern Heights' service within the Service Area will potentially allow it to extend water service to locations in the vicinity of the Service Area that previously could not receive service as economically.

5. OUC's Case-in-Chief. Mr. Larry W. McIntosh ("L.W. McIntosh"), Utility Analyst for the Water/Wastewater Division of the OUC, testified that Petitioner will be leasing approximately 16,120 feet of ten inch PVC water main pipe with a number of fire hydrants and valves, a booster station, a 25,000 gallon pedosphere elevated water tank, easements and related real estate. A copy of the plans and specifications was attached to his testimony.

L.W. McIntosh next confirmed that Petitioner already provides water utility service in the Service Area and stated that he agreed that Eastern Heights has the financial, managerial and technical capacity to provide service to the Service Area. L.W. McIntosh further agreed that

Eastern Heights' provision of water utility service within the Service Area would be in the public interest as a winning situation for all parties involved. L.W. McIntosh testified that the OUCC has no objection to Eastern Heights' request that the Commission consent to Greene, Martin and Daviess Counties granting the Petitioner licenses, permits or franchises for the use of county-owned property to provide water utility service in the Service Area.

L.W. McIntosh recommended that the Commission approve the Lease and grant the other relief requested. L.W. McIntosh also recommended that the Commission require Eastern Heights to perform tank inspections at a minimum of every three to five years, as recommended by the American Water Works Association; require Eastern Heights to incorporate the valves acquired from this lease into Eastern Heights' Valve Exercising Program; and to incorporate the fire hydrants acquired through this lease into Eastern Heights Hydrant Maintenance Program.

6. Petitioner's Rebuttal Testimony. Kenneth McIntosh testified on rebuttal that Eastern Heights accepts the OUCC's recommendations to incorporate valves and hydrants included within the Leased Facilities into Petitioner's existing Valve Exercising and Hydrant Maintenance Programs. Petitioner did not agree with the recommendation to perform tank inspections every three to five years. Mr. McIntosh indicated that Eastern Heights agreed that proactively maintaining its storage tanks is important, but based on Petitioner's experience, requiring an inspection of each tank as frequently as every three to five years is not necessary. In particular, Mr. McIntosh testified that the cost of inspecting Eastern Heights' tanks every three to five years will likely prove financially burdensome for a small utility that has 13 storage tanks on its system. Mr. McIntosh recommended that the Commission find that Eastern Heights be required to conduct periodic inspections of its storage tanks every five to seven years instead.

7. Commission Discussion and Findings.

A. Approval of the Lease. Ind. Code § 8-1-2-84 broadly provides that a public utility may enter into a lease upon the order of a majority of its board of directors and with the approval of the Commission. The evidence shows that the Resolution adopted by the Board of Directors at Eastern Heights appropriately authorizes the Lease and related transactions. Further, there was no question raised in this proceeding regarding whether Eastern Heights possesses the corporate power, managerial, technical and financial ability to own and operate the Leased Facilities and thereby provide adequate and reliable service to customers within the Service Area currently and in the future when the Lease Facilities are available. The evidence demonstrates that Petitioner not only has adequate staff and facilities to acquire additional customers in the Service Area, but also that by looping Petitioner's current water utility infrastructure with the Leased Facilities' planned infrastructure, Petitioner will be able to adequately provide water utility service as the demand increases.

The evidence demonstrates that the terms of the Lease do not create any undue burden for Petitioner's existing customers in the Service Area. The amount of rent is modest and the Lease does not impose any responsibility for the construction debt on Eastern Heights. In fact, the evidence demonstrates that because of the collaborative efforts of UDWI and GCRC in submitting an application to the Rural Development through its Economic Development Loan Program, UDWI received approval for a \$740,000 loan, which UDWI has re-loaned to GCRC for the construction of the Leased Facilities. UDWI has also established a Revolving Loan Fund and has agreed to loan GCRC an additional \$300,000 for construction of the Leased Facilities. GCRC also has agreed to

commit approximately \$500,000 in incremental property tax revenues to fully fund the Leased Facilities. Eastern Heights' financial obligations relating to the Leased Facilities are limited to those set forth in the Lease. Finally the evidence demonstrates that the Lease will also be beneficial to Eastern Heights' existing customers through the ability to spread costs over a larger customer base.

The evidence of record demonstrates that Petitioner is the only water utility currently providing service within the Service Area, and that no other provider is currently in a position to extend service to the Service Area. The evidence also demonstrates that GCRC lacks the expertise to provide water utility service to the area and, if it were to do so, its water utility service would be unnecessary and duplicative of the services provided by Petitioner. Based on the evidence, the Commission finds that Eastern Heights has the requisite corporate authority to own and operate the Leased facilities and that it is reasonable for Petitioner to enter into the Lease.

B. Public Necessity and Convenience. Ind. Code § 36-2-2-23 provides that if a public utility that carries on business outside the corporate boundaries of municipalities in the county is engaged in an activity substantially similar to that for which a license, permit or franchise for the use of county property is sought, the county executive may grant the license, permit or franchise only with the consent of the Commission. Further, the Commission may give its consent only if it determines, after a public hearing of all interested parties, that public necessity and convenience require the substantially similar activity. As discussed above, the Commission finds it reasonable to provide consent for the licenses, permits and/or franchises that may be required for Petitioner's operation of water utility assets and the provision of water utility services in the Service Area.

The evidence indicates Petitioner is the only water utility currently providing service within the Service Area, and no other provider is currently in a position to extend service to the Service Area. Further, GCRC has declined to offer water utility service in the service area to avoid unnecessary duplication and waste. The evidence established that the planned commercial and industrial development within the Service Area cannot occur without the availability of adequate water utility service and that Eastern Heights is best positioned to provide that service in an efficient and cost-effective manner. The evidence demonstrates that public necessity and convenience will be served in at least three ways. First, the Lease provides Eastern Heights with access to the facilities it needs to meet the Service Area's demand for water service in the future at a reasonable cost that will not burden its existing customers. Second, Eastern Heights' existing customers will ultimately benefit from the development within the Service Area due to Eastern Heights' ability to spread costs over a larger customer base. Third, Eastern Heights' service within the Service Area will provide the ability to extend water service to locations in the vicinity of the Service Area that previously could not receive service economically. Based on the evidence, the Commission finds that public necessity and convenience requires Petitioner's water utility service to the Service Area and consents to Greene, Martin and Daviess Counties granting Eastern Heights' licenses, permits and/or franchises for the use of county-owned property to provide water utility service in the Service Area.

C. OUC's Operational Recommendations. Finally after reviewing the evidence, we note the Petitioner has agreed to the OUC's recommendations to incorporate valves included within the Leased Facilities into its existing Valve Exercising Program, and to incorporate hydrants included within the Leased Facilities into its existing Hydrant Maintenance Programs.

The OUCC also recommended that Petitioner implement an inspection schedule of the tank within the Leased Facilities every three to five years. Petitioner objected to the proposed inspection schedule and suggested instead that inspection occur every five to seven years. The OUCC stipulated at the evidentiary hearing that it would not oppose the slightly longer, five to seven year tank inspection cycle for the tank included in the Leased Facilities. The OUCC explained the longer inspection cycle in this case is based on the following factors: (i) the small number of customers Petitioner currently serves; (ii) uncertainty as to the timing, speed and number of customers that will be added, or the timing and level of increased demand Petitioner will experience as a result of future economic development at the Park; and/or (iii) the fact that the tank included in the Leased Facilities will be new and will not likely require significant maintenance or repairs during the initial five to seven year inspection cycle Petitioner proposed. The Commission finds that these operational recommendations are reasonable, appropriate, and are hereby approved.

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

1. The April 19, 2012 "Lease of Property with Option to Purchase" entered into by and between Eastern Heights Utilities, Inc. and Greene County, Indiana, by and through its Department of Redevelopment and the transactions contemplated by it is hereby approved;
2. The Commission hereby consents for purposes of Ind. Code § 36-2-2-23 to Greene, Martin and Daviess Counties granting Eastern Heights licenses, permits and/or franchises for the use of county-owned property to provide water utility service in the Service Area;
3. Eastern Heights shall comply with the operational recommendations set forth in Finding No. 7.C; and
4. This Order shall be effective on and after the date of its approval.

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

APPROVED: APR 24 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