

ORIGINAL



STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

JOINT PETITION OF CITY OF )  
EVANSVILLE, INDIANA AND ) CAUSE NO. 44295  
JOHNSON CONTROLS, INC. FOR )  
APPROVAL OF A GUARANTEED )  
PERFORMANCE CONTRACT AND ) APPROVED:  
ASSOCIATED FINANCING TERMS. )

MAR 27 2013

ORDER OF THE COMMISSION

Presiding Officers:

**James D. Atterholt, Chairman**  
**Larry S. Landis, Commissioner**  
**Jeffery A. Earl, Administrative Law Judge**

On January 22, 2013, the City of Evansville, acting through its Water and Sewer Utility Board, (“Evansville”) and Johnson Controls, Inc. (“JCI”) (collectively “Joint Petitioners”) filed a Joint Petition with the Indiana Utility Regulatory Commission (“Commission”), seeking approval and authorization as necessary for Evansville to enter into a guaranteed performance contract (“Contract”) with JCI and to finance the assets and services to be provided by JCI. On the same date, Joint Petitioners filed their Case-in-Chief and Request for Administrative Notice in this Cause. On January 24, 2013, Joint Petitioners filed a supplement to Joint Petitioners’ Exhibit MEP-3 and on February 18, 2013, Joint Petitioners filed updated Direct Testimony of Douglas L. Baldessari and an updated Joint Petitioners’ Exhibit DLB-1. On February 22, 2013, the Indiana Office of Utility Consumer Counselor (“OUCC”) filed its Case-in-Chief and written comments received from a member of the public.

Pursuant to notice published as required by law, the Commission convened an Evidentiary Hearing at 9:30 a.m. on March 14, 2013, in Hearing Room 222, 101 West Washington Street, Indianapolis, Indiana. Proofs of publication of the notice of the hearing were incorporated into the record and placed in the official files of the Commission. Joint Petitioners and the OUCC appeared, presented their respective cases-in-chief and customer comments, and offered their witnesses for cross-examination.

Having considered the evidence presented in this proceeding and the applicable law and being duly advised, the Commission finds:

1. **Commission Notice and Jurisdiction.** Due, legal, and timely notice of the hearing conducted by the Commission in this Cause was given and published as required by law. Evansville is a “municipally owned utility” as defined in Ind. Code § 8-1-2-1(h). Evansville’s water utility is subject to the jurisdiction of this Commission in the manner and to the extent provided by Ind. Code Art. 8-1.5. Evansville’s sewer utility is not subject to Commission jurisdiction. Evansville seeks approval pursuant to Ind. Code ch. 8-1.5-2 to issue debt to finance the Contract with JCI. Therefore, the Commission has jurisdiction over Evansville and the

subject matter of this proceeding.

2. **Joint Petitioners' Characteristics.** Evansville is a municipality organized under the laws of the State of Indiana and located in Vanderburg County. Evansville owns, operates, manages, and controls a water utility for the production, treatment, and distribution of water to the public in the Evansville area. Evansville also owns, operates, manages, and maintains facilities for the collection, treatment, and disposal of wastewater generated by the public. JCI is engaged in the business of evaluating utility operations, identifying opportunities for energy and other savings, and implementing actions to realize those savings.

3. **Cause No. 44123.** In Cause No. 44123, Joint Petitioners sought Commission approval of the predecessor agreement to the Contract ("Prior Contract") and authorization for Evansville to issue debt to finance the construction of the project. In our August 15, 2012 Order in Cause No. 44123, we denied Evansville's request to issue debt to finance the costs associated with the Prior Contract, finding that Ind. Code § 8-1.5-2-19(b) requires the utility to demonstrate that it has sufficient funds for the operation, maintenance, and depreciation of the utility, and to pay the principal and interest on the proposed bond issue, together with a surplus or margin of at least ten percent in excess ("Ten Percent Test"). We also expressed concerns regarding the creation of a wireless broadband network in Evansville, stating that any future requests for approval of financing for the project must demonstrate that ratepayer funds will not be used to impermissibly subsidize a public Wi-Fi broadband network. Joint Petitioners filed a Petition for Reconsideration and Rehearing in Cause No. 44123, which we denied on October 31, 2012.

In support of their Petition for Reconsideration and Rehearing in that Cause, Joint Petitioners had offered evidence of a series of change orders negotiated by Evansville and JCI to address the concerns raised by the Commission in its August 15, 2012 Order. We determined that the change orders entered into by Joint Petitioners with respect to the Prior Contract were not the type of new evidence contemplated by 170 IAC 1-1.1-22(e) and appeared to materially change the contract under consideration in that Cause. Accordingly, we instructed Joint Petitioners to seek approval of financing for what is essentially a new contract by filing a new petition for approval with the Commission. As a result, Joint Petitioners filed the Joint Petition in this Cause.

4. **Relief Requested.** Under the terms of the Contract, JCI will purchase and install approximately 44,000 new water meters and approximately 17,000 new registers, as well as a state-of-the-art data service and meter reading system. The Contract also includes a maintenance, testing, and replacement program. Joint Petitioners seek approval of the Contract to the extent necessary under Ind. Code ch. 8-1.5-2. Joint Petitioners assert that the Contract guarantees increased revenues and cost savings sufficient to pay for the cost of financing the Contract. Evansville also seeks authorization pursuant to Ind. Code ch. 8-1.5-2 to issue debt to finance the construction of the project.

5. **Joint Petitioners' Evidence.** Joint Petitioners requested the Commission take administrative notice, pursuant to 170 IAC 1-1.1-21, of the following documents which were made part of the record in Cause No. 44123: Joint Petitioners' Exhibits MEP, DLB, and JAG; Public's Exhibits 1 and 2; Joint Petitioners' Exhibits MEP-R, DLB-R, SLB-SR1, MEP-SR1; and the Transcript of the Evidentiary Hearing held on April 19, 2012. The Presiding Administrative

Law Judge granted the request for administrative notice during the Evidentiary Hearing in this Cause. Our August 15, 2012 Order in Cause No. 44123 provided a detailed summary of the evidence in that Cause.

Allen R. Mounts, Director of the Evansville Water and Sewer Utility, described the proceeding in Cause No. 44123 as it related to the Prior Contract. He testified that since the date the parties executed the Prior Contract, Evansville's administration changed, but Evansville remained supportive of the project as represented by the amended and restated Contract. Mr. Mounts sponsored an exhibit summarizing the changes made to the Prior Contract as memorialized in the Contract. He testified that he believes the Contract is in the public interest.

Michael E. Popa, JCI's Area General Manager for Indiana, provided a description of the changes and corrections to his Rehearing Testimony from Cause No. 44123, including additional change orders that were not covered in that testimony, and explained how Evansville and its customers will benefit from the Contract. Mr. Popa sponsored a copy of his Rehearing Testimony in Cause No. 44123 as an exhibit to his direct testimony in this Cause. In that Rehearing Testimony, he described four change orders negotiated by JCI and Evansville with respect to the Prior Contract: (1) Change Order No. 1 changed the scope of work related to the proposed wireless network build-out to address the Commission's concern in the August 15, 2012 Order; (2) Change Order No. 2 removed a warranty on SmartPoint metering transmitting units; (3) Change Order No. 3 changed the scope of work related to improvements to treatment plants; and (4) Change Order No. 4 reduced the number of small meters that will be changed out. In his Rehearing Testimony, Mr. Popa provided the amount of resulting cost reductions from each of the foregoing change orders and described the allocation of those reductions to the contingency fund for the project.

Mr. Popa testified that two additional change orders to the Contract had been negotiated by the parties that were not described in his Rehearing Testimony from Cause No. 44123: (1) Change Order No. 5, which clarifies that JCI will pay for the 2-year Opti-Man buyout from AT&T; and (2) Change Order No. 6, which clarifies the baseline parameters related to the Monarch Properties meter. Mr. Popa stated that the projected savings amount is for the project in its entirety and JCI stands behind its guarantee under the Contract. Therefore, he described three possible scenarios to ensure that the savings are met despite the inaccurate baseline with respect to the Monarch Properties meter. He indicated the most likely scenario was that the excess benefits from other measures under the Contract would more than compensate for any shortfall related to the Monarch account. Mr. Popa testified, however, that if that were not the case, either JCI would invest its own money to implement additional improvement measures to make up for any shortfalls, or JCI would simply pay Evansville directly every year for any shortfall.

Mr. Popa also stated that, while JCI is not guaranteeing a particular level of revenue for Evansville under all possible demand scenarios, at the level of performance guaranteed under the Contract the savings and revenues from the Contract will be sufficient to cover the costs of the Contract and Evansville materially benefits from JCI's guarantee. Mr. Popa testified that the program will create about 170 new direct jobs and another 270 indirect and induced jobs according to the Regional Input-Output Modeling system from the Bureau of Economic Analysis, a bureau of the U.S. Department of Commerce. He stated it is anticipated that more than 90 percent of the project dollars will stay in the community, listing the local contractors and

engineering partners used by the project.

Douglas L. Baldessari, a Certified Public Accountant with the firm of Umbaugh, Certified Public Accountants, testified regarding Evansville's ability to pay the debt service on the Contract bond issue and all other costs of the project, plus a cushion of ten percent. The accounting report prepared by Mr. Baldessari illustrates that Evansville's pro forma debt service coverage on the outstanding waterworks revenue bonds, the waterworks revenue bonds proposed in Cause No. 44137, and the proposed waterworks revenue bonds to fund the Contract projects is not less than 149%. Mr. Baldessari's updated direct testimony explains that the pro forma debt service coverage was calculated using the pro forma revenue requirements and revenues from the Commission's findings in its February 13, 2013 Order in Cause No. 44137, Evansville's water utility rate and financing case. Those pro forma amounts were then adjusted for the pro forma debt service on the proposed waterworks revenue bonds to fund the Contract projects and contract benefits resulting from the proposed Contract. Mr. Baldessari further testified that if any owner controlled contingency project funds are unused upon completion of the project, Evansville will use the remaining monies to fund the debt service reserve account for the proposed revenue bonds used to fund the project. Mr. Baldessari opined that Evansville is able to satisfy the Ten Percent Test.

**6. OUCC's Evidence.** Edward R. Kaufman, CRRA, a Chief Technical Advisor for the OUCC's Water/Wastewater Division, testified that Evansville had adequately demonstrated that its proposed financing will meet the Ten Percent Test. He stated the OUCC recommends Evansville be granted authority to issue long-term debt of up to \$17.0 million for a term no longer than 23 years and a maximum average interest rate of 5.5%. He also recommended Evansville be required to report to both the OUCC and the Commission within ten business days of closing on the loan, disclosing the terms of the loan and the amounts of all non-construction costs incurred. Mr. Kaufman also testified that the financing authority should not continue indefinitely and that any unused financing authority granted in this Cause should expire after one year from the date of this Order unless extended by mutual agreement of all of the parties.

Mr. Kaufman recommended that if Evansville spends any of the funds from its debt service reserve for any reason other than to make the last payment on its proposed loan, Evansville should be required to provide a report to the Commission and the OUCC within five business days stating how much Evansville spent from its debt service reserve, explaining why it spent the funds, citing any applicable loan documents permitting Evansville to spend funds from its debt service reserve, describing Evansville's plans to replenish its debt service reserve, and explaining any cost-cutting activities Evansville has implemented to forestall spending funds from its debt service reserve.

**7. Commission Discussion and Findings.** Joint Petitioners have requested the Commission approve the Contract "to the extent deemed necessary." As we discussed in our August 15, 2012 Order in Cause No. 44123 and in *City of Princeton*, Cause No. 43538, 2009 Ind. PUC LEXIS 52 (IURC Feb. 11, 2009), the Contract is not subject to Commission approval under Ind. Code ch. 8-1.5-2. Therefore, we take no action with respect to approval of the Contract.

A municipality may not issue bonds, notes, or other obligations that are payable more

than twelve months after their execution without Commission approval. Ind. Code § 8-1.5-2-19(a). The Commission uses a two-prong standard to review proposed debt issuance. *See City of Richmond*, Cause No. 43375, 2008 Ind. PUC LEXIS 124, at \*15 (IURC Feb. 27, 2008); *City of Evansville*, Cause No. 43190, 2007 Ind. PUC LEXIS 280, at \*8 (IURC Sept. 26, 2007). First, we consider whether the proposed capital improvements are reasonably necessary for the provision of adequate and efficient utility service. *Id.* Second, we determine whether the proposed debt issuance is a reasonable method for financing the necessary capital improvements. *Id.* No party of record in this proceeding has disputed the merits of the project or the method of financing in this Cause.

In Cause No. 44123, we denied Evansville's request for financing authority because it did not meet its burden of showing it satisfied the Ten Percent Test. Ind. Code § 8-1.5-2-19(b) requires a utility to demonstrate that its rates and charges "will provide sufficient funds for the operation, maintenance, and depreciation of the utility, and to pay the principal and interest of the proposed bond issue, ...." The evidence offered in this Cause by Mr. Baldessari shows that the Ten Percent Test is met. The OUCC's witness, Mr. Kaufman, confirmed the accuracy of Mr. Baldessari's calculations.

Having reviewed the evidence presented in this Cause, we find that the proposed capital improvements are reasonably necessary for the provision of adequate and efficient utility service. We also find that Evansville has met the requirement of Ind. Code § 8-1.5-2-19(b) and that the proposed debt issuance is a reasonable method for financing the capital improvements. Therefore, we authorize Evansville to issue debt financing secured by waterworks revenues in a principal amount not to exceed \$17.0 million at a maximum average interest rate of 5.5% for a term not to exceed 23 years. Joint Petitioners shall also comply with Mr. Kaufman's recommended reporting requirements as discussed above.

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

1. The City of Evansville is authorized to issue up to \$17.0 million of debt at a maximum average interest of no more than 5.5% for no more than 23 years.
2. Within ten days of closing, Evansville shall file a report with the Commission describing the terms of the financing and listing the amounts of all non-construction costs incurred.
3. In the event Evansville spends any of the funds from its debt service reserve for any reason other than to make the last payment on its proposed loan, Evansville shall provide a report to the Commission and the OUCC within five (5) business days stating the following: (1) how much Evansville spent from its debt service reserve; (2) why Evansville spent the funds; (3) a cite to any applicable loan documents permitting Evansville to spend funds from its debt service reserve; (4) Evansville's plans to replenish its debt service reserve; and (5) any cost-cutting activities Evansville has implemented to forestall spending funds from its debt service reserve.
4. In accordance with Ind. Code § 8-1-2-70, Petitioner shall pay the following

itemized charges within twenty (20) days from the date of this Order to the Secretary of the Commission:

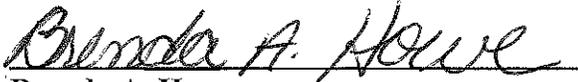
Commission Charges	\$ 773.75
OUCG Charges	\$ 2,818.26
Legal Advertising Charges	\$ 45.78
TOTAL	\$ 3,637.79

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

**ATTERHOLT, BENNETT, LANDIS, MAYS AND ZIEGNER CONCUR:**

**APPROVED: MAR 27 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**