

ORIGINAL

| Commissioner | Yes | No | Not Participating |
|--------------|-----|----|-------------------|
| Huston | √ | | |
| Freeman | √ | | |
| Krevda | √ | | |
| Ober | √ | | |
| Ziegner | | | √ |

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

**PETITION OF THE CITY OF EVANSVILLE,)
INDIANA, FOR AUTHORITY TO ISSUE BONDS,)
NOTES, OR OTHER OBLIGATIONS, FOR) CAUSE NO. 45545
AUTHORITY TO INCREASE ITS RATES AND)
CHARGES FOR WATER SERVICE, AND FOR) APPROVED: MAR 02 2022
APPROVAL OF NEW SCHEDULES OF WATER)
RATES AND CHARGES.)**

ORDER OF THE COMMISSION

Presiding Officers:

David E. Ziegner, Commissioner

Stefanie N. Krevda, Commissioner

Loraine L. Seyfried, Chief Administrative Law Judge

On May 10, 2021, the City of Evansville, Indiana (“Petitioner” or “Evansville”) filed with the Indiana Utility Regulatory Commission (“Commission”) a Petition seeking approval to issue bonds, notes, or other evidence of indebtedness, increase Petitioner’s rates and charges for water service, and implement new schedules of water rates and charges. On that same day, Petitioner filed its case-in-chief supporting its Petition.

The Commission conducted a public field hearing in this Cause at the University of Evansville in Evansville, Indiana on August 12, 2021, at 6:00 p.m. (local time). Evansville and the Indiana Office of Utility Consumer Counselor (“OUCC”) appeared at the hearing, and members of the public offered oral and/or written comments.

On September 3, 2021, the OUCC filed its case-in-chief testimony and exhibits.

On September 24, 2021, Evansville filed its rebuttal testimony and exhibits.

On October 6, 2021, the Commission issued a Docket Entry in which the Presiding Officers requested additional information from the parties. Petitioner and the OUCC filed their responses on October 12, 2021. A second Docket Entry was issued requesting additional information on October 22, 2021, and the parties responded on October 26, 2021.

An evidentiary hearing was held on October 27, 2021, at 10:15 a.m., in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Petitioner and the OUCC were present and participated.

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

1. Notice and Jurisdiction. Due, legal, and timely notice of the hearings conducted in this Cause was given as required by law. Evansville is a municipally owned utility as defined by Ind. Code § 8-1-2-1(h). Under Ind. Code § 8-1.5-3-8(f)(2) and Ind. Code §§ 8-1-2-42 and -42.7,

the Commission has jurisdiction over changes to Evansville's water utility rates and charges. Further, the Commission has jurisdiction under Ind. Code § 8-1.5-2-19 to approve issuances of long-term debt. Thus, the Commission has jurisdiction over Evansville and the subject matter of this proceeding.

2. Petitioner's Characteristics. Petitioner owns and operates a municipal waterworks and related facilities providing water sales and service to customers in and near the City of Evansville, Indiana. Additionally, Petitioner sells water at wholesale to certain other water utilities. Evansville's existing rates and charges were approved by the Commission in Cause No. 45073 through an Order issued on December 5, 2018, which was modified on December 19, 2018.

3. Relief Requested. Evansville, in its Petition, requests authority to issue bonds, notes, or other evidence of indebtedness and increase its rates and charges on an across-the-board basis through a five-phase rate increase: an increase of approximately 7.50% to be effective upon issuance of the Commission's Order in this Cause ("Phase I"), an increase of approximately 7.03% to be effective April 1, 2023 ("Phase II"), and increases of approximately 6.53%, 6.21% and 4.31% for Phases III, IV, and V to be effective April 1, 2024, 2025, and 2026, respectively.

4. Test Year. Pursuant to Ind. Code § 8-1-2-42.7(d), Petitioner proposed a forward-looking test year be used in this proceeding based on projected data for the 12-month period ending March 31, 2024 ("Test Year"). The Test Year begins not more than 24 months following the filing of the Petition, and it is based upon projected data, with the period of projection commencing from the close of the historic base period. The historic base period used by Petitioner in this proceeding is the 12 months ending September 30, 2020.

5. Public Comments. The Commission received both oral and written comments from Evansville's customers regarding the requested relief in this Cause. The comments received generally opposed Evansville's requested rate increase. Some customers also questioned Evansville's spending priorities, the operational efficiencies of the utility, and whether alternative means of funding the proposed capital projects might exist. Many customers also questioned the timing of Evansville's rate request as well as the need for a rate increase during a pandemic and so soon after Petitioner's last authorized rate increase.

6. The Parties' Evidence.

A. Evansville's Case-in-Chief. The Executive Director of Evansville's utility, Mr. Lane T. Young, sponsored Attachments LTY-1 through LTY-3 of Petitioner's Exhibit 1, the three resolutions passed by the Board of Directors of Petitioner's utility authorizing it to seek Commission approval of an across-the-board rate increase of 35.95% in five phases and issuance of bonds not to exceed \$260 million. Mr. Young described how Evansville communicated with customers and citizens about the proposed rate increase and bond issuance. He also testified, per the Commission's advice in Evansville's last rate case (Cause No. 45073), Evansville met with the Commission and the OUCC prior to its rate case filing.

Mr. Doug L. Baldessari, a Certified Public Accountant with Baker Tilly Municipal Advisors, LLC, testified concerning his review of Petitioner's rate needs and sponsored the Accounting Report summarizing that review. Mr. Baldessari explained how the Test Year and its

results were determined. He stated Petitioner proposes phasing in the rate increase over five annual phases, starting with the Phase I rate increase upon the issuance of an Order in this Cause or April 1, 2022, whichever is later. Mr. Baldessari further explained why he believes Ind. Code § 8-1-2-42.7 and Ind. Code § 8-1.5-3-8 support raising rates in this fashion before the commencement of the Test Year. He also walked through each of the fourteen adjustments to Petitioner's annual cash operating expenses, the two adjustments to base period annual operating revenues, and the seven pro forma adjustments to determine proposed present rate Test Year operating revenues, which included a declining use adjustment and a COVID adjustment.

Mr. Baldessari testified Petitioner's case is primarily driven by a 5-year capital improvement plan ("CIP"), which is made up of the construction of a new water treatment plant ("WTP"), improvements to the distribution system, road relocations, booster station improvements, engineering, planning, and annual capital improvements. He testified the various improvements in the CIP total \$269.2 million and Petitioner proposes to fund the CIP projects with a combination of \$220.2 million in bonds and \$49.0 million from extensions and replacements ("E&R") from the annual CIP allowance. Although Mr. Baldessari testified Petitioner requests authority to issue long-term debt in an amount of \$238,165,000 to fund the CIP, he also noted Evansville continues to evaluate other financing and grant funding opportunities. Attachment DLB-1 of Petitioner's Exhibit 2 (at p. 3) reflects the \$238,165,000 consists of \$220.2 million in construction, engineering, and contingency costs for the projects and \$17.936 million in non-construction costs, with estimated funding from open market bonds of \$63.185 million and State Revolving Fund ("SRF") bonds of \$174.98 million.

Mr. Baldessari testified Petitioner requests authority to phase-in its proposed rate increase over five phases primarily to fund debt service from the bond issue. He explained the phased-in rate increases will mitigate the rate impact on customers.

Mr. Michael Labitzke, Director of the Program Management Office for Evansville's utility, testified regarding Petitioner's Refresh Evansville program for replacing aging water mains and infrastructure, the replacement of Petitioner's existing WTP, and certain booster station and pump improvements. Mr. Labitzke testified Petitioner proposes to fund design and/or construction of: (1) seven Refresh Evansville projects at an estimated cost of \$9.2 million; (2) ten Roadway Relocation projects at an estimated cost of \$43.0 million; (3) two booster station improvement projects at an estimated cost of \$939,000; and (4) Program Management Planning. Mr. Labitzke described each of the projects and explained how the projects were identified using Evansville's prioritization methodology.

Mr. Labitzke also testified regarding Evansville's proposal to relocate an existing garage owned by the city of Evansville for its Street Maintenance Department ("City Garage") to accommodate construction of the new WTP. Mr. Labitzke testified Petitioner, in conjunction with its consultant, AECOM, evaluated several potential locations for the new WTP. He stated AECOM's evaluation indicated that building the WTP on or near the existing WTP site would be the most cost-effective option. Mr. Labitzke testified the City Garage site was ultimately identified as the preferable location for the new WTP. He testified the cost estimate for relocating the City Garage is \$13,114,999.

Mr. Simon Breese, Vice President at AECOM and National Technical Director, Water Treatment, Americas, testified regarding Evansville's proposal to replace its WTP in this Cause. He sponsored AECOM's Water Treatment Plant Advanced Facility Plan for evaluation of Evansville's existing WTP and related proposed recommendations.

Mr. Breese testified that Evansville's existing WTP was originally constructed in the 1890s and has been expanded in several stages. He testified that although Evansville has been able to meet water demands and treated water standards, many of the components are beyond their useful life, prone to failure, and in need of major refurbishment or outright replacement. He testified the overall level of reliability and redundancy in the plant poses a risk to the reliable supply of water, and several instances have occurred in recent years where failures of key pieces of equipment have jeopardized the ability to deliver water. Although the existing plant is rated for a capacity of 60 million gallons per day ("MGD"), he testified the effective capacity of the plant is approximately 45 MGD because performance issues occur at higher flow rates. He testified demand projections anticipate average day demand and peak day demand rising to 36.4 MGD and 49.4 MGD, respectively, by year 2050. For this reason, Evansville adopted a reduced rated design capacity for the new plant of 50 MGD.

Mr. Breese discussed the alternatives that were evaluated to address the issues with the existing WTP. He identified three main alternatives: (1) rehabilitation of the existing WTP; (2) construction of a new WTP; and (3) construction of a new WTP using both surface water and groundwater in an approximate 50/50 blend. He stated Evansville also considered a "Do Nothing" alternative involving continued, reactive refurbishment of existing facilities to keep the existing plant in service. The second alternative was further subdivided into two sub-alternatives: (1) constructing a new WTP on the existing WTP site (Alternative 2A); and constructing the WTP on a new site (Alternative 2B). Based on an evaluation of these alternatives, Mr. Breese testified AECOM recommended construction of a new 50 MGD WTP on a new site east of the existing site (Alternative 2B). Further, if residuals management is required, AECOM also recommended a portion of the existing WTP be rehabilitated for residuals management. Mr. Breese testified the estimated construction cost for Alternative 2B is \$151 million, and if a new residuals management facility is required, it will add an estimated \$30 million to the cost.¹ Mr. Breese explained Alternative 2B was selected because it had the lowest life cycle cost and would effectively eliminate almost all impacts to ongoing operations during construction. It would also include some short-term reliability improvements to the existing plant through to construction of the new WTP.

Mr. Breese concluded replacement of the existing WTP is reasonably necessary for Evansville to continue providing reasonable and adequate water utility service because the existing plant is beyond the end of its effective life. He stated that continuing to operate the plant increases the risk of a major failure occurring, which would lead to plant outage and loss of water supply.

B. OUCC's Case-in-Chief. Margaret A. Stull, Chief Technical Advisor with the Water/Wastewater Division, sponsored the OUCC's accounting schedules, which included a comparison of the overall revenue requirement proposed by Petitioner and the OUCC. Ms. Stull

¹ Mr. Baldessari explained his Accounting Report reflects approximately \$5 million less than the \$181 million cost identified by Mr. Breese due to a scoping update for the new WTP that occurred in late April 2021. Pet. Ex. 2, p. 16.

testified the OUCC recommends the Commission approve an overall across-the-board revenue increase of \$9,185,727, or 20.84%, to be implemented in two phases. She expressed disagreement with Evansville's proposal to begin implementing its Phase I rate increase in April 2022 and recommended the Commission authorize the rate increase to commence no earlier than the first day of the Test Year, April 1, 2023.

Ms. Stull addressed each of the OUCC's proposed adjustments to Evansville's pro forma operating revenues and pro forma operating expenses. She recommended pro forma operating revenues at present rates of \$44,087,215. Ms. Stull accepted several of Evansville's proposed adjustments to operating revenues but recalculated Petitioner's proposed residential customer adjustments for COVID-19 and Cause No. 45073 rate increases to remove sales tax. She also recommended her own base period normalization adjustments for residential, commercial, and public authority customer classes; removal of sales tax expense from residential revenues; and an adjustment of additional sale for resale revenues from Gibson Water Authority ("Gibson Water").

After deducting \$13,933,154 for the sewer portion of expenses, Ms. Stull recommended pro forma net operating expenses of \$17,236,898. She accepted many of Evansville's proposed adjustments but ultimately recommended pro forma net operating expenses of \$869,539 less than what Evansville proposed. A comparison of the parties' test year operating expenses was provided in Table MAS-15 of OUCC's Exhibit 1.

Regarding Evansville's proposed periodic maintenance expense adjustment, Ms. Stull testified the OUCC recommends a \$159,195 decrease to base year periodic maintenance expenses of \$1,125,763, which results in pro forma periodic maintenance expense of \$884,537.² Although Ms. Stull accepted Evansville's proposed booster pump expense, she explained her disagreement with the remaining periodic maintenance expenses proposed by Evansville. She also identified \$399,383 of additional base period expenses that should be included in the determination of the appropriate periodic maintenance expense adjustment (i.e., quarterly tank maintenance invoice of \$128,567, payment to rebuild a traveling screen of \$184,796, pump maintenance of \$82,631, and base period expenditure for the supervisory control and data acquisition ("SCADA") system of \$3,389). Ms. Stull also recommended an adjustment to eliminate \$26,594 of non-allowed fraud losses incurred during the base period. Finally, Ms. Stull explained additional adjustments made to Evansville's proposed sewer reimbursement, bad debt expense, and utility receipts tax that flowed through from other OUCC recommendations.

Thomas W. Malan, Utility Analyst with the Water/Wastewater Division, discussed the OUCC's recommended expense adjustments to base period operating expense for salaries and wages, employee benefits, and lease expense. Specifically, he disagreed with Petitioner's addition of nine new positions and recommended only the new positions of an accounting clerk, a night shift supervisor-water construction, a safety professional, and an administrative assistant be

² We note that Schedule 6 of OUCC Ex. 1 reflects a \$159,195 decrease to base period periodic maintenance of \$1,126,363, resulting in pro forma test period periodic maintenance of \$967,168. It appears Ms. Stull inadvertently omitted pro forma pump maintenance of \$82,631 in arriving at the pro forma periodic maintenance expense of \$884,537 in her testimony. The reason for the \$600 difference between the base year periodic maintenance expense is unclear. However, Table MAS 26 of OUCC Ex. 1 also reflects a base year periodic maintenance expense of \$1,126,363, which we believe to be correct.

included in rates. In addition, Mr. Malan explained that because the accounting clerk and night shift supervisor positions will be shared with the sewer department, 50% of the costs of these positions should be reimbursed from the sewer department. Mr. Malan accepted Evansville's proposed vehicle lease expense adjustment but disagreed with the proposed increase for the office space lease, which is shared with the sewer utility.

Mr. Malan also explained his calculation of payment in lieu of taxes ("PILT") and recommended a \$4,752,346 revenue requirement for rates to be implemented in 2023. He explained he accepted the tax rate and the 25% estimate for property located outside of municipal limits as proposed by Evansville. However, because of recommendations made by other OUCC witnesses, his recommended PILT was different from that proposed by Evansville.

Shawn Dellinger, Utility Analyst with the Water/Wastewater Division, testified regarding Petitioner's proposed \$238,165,000 bond issuance. Mr. Dellinger recommended the Commission grant Petitioner authority to borrow up to \$167,000,000 at an interest rate of 4.75%, with the authorization consisting of \$52,000,000 for the open market borrowing and \$115,000,000 for the SRF borrowing. He testified the OUCC's recommendation is based on the: (1) elimination of \$750,000 for the Preliminary Engineering Report ("PER") and \$350,000 for Water Infrastructure Finance and Innovation Act ("WIFIA") fees that were unsupported; (2) reduction in the cost of the WTP as recommended by Mr. Parks; (3) removal of costs associated with building the City Garage as recommended by Mr. Parks; (4) removal of the residuals management facility as recommended by Mr. Bell; (5) elimination of \$8,500,000 in capitalized interest expense; and (6) flow through adjustments to underwriters fees and IURC fees. Mr. Dellinger recommended an annual revenue requirement of \$3,675,000 for debt service and \$735,000 for debt service reserve.³

Mr. Dellinger discussed Petitioner's previous bond issuances and the merits of aligning the timing of the borrowings with the associated spending. He noted Evansville had a restricted account balance of \$102,340,066 as of September 30, 2020 and significant unspent restricted account balances in recent prior years. He discussed the rate of spending from these bond issuances, noting that Petitioner had not spent more than \$18,500,000 annually in previous years but projected spending over \$41,750,000 in just the final seven months of 2021. He suggested this is an ambitious level of spending and recommended Petitioner delay borrowing where practicable until existing balances are generally spent.

Mr. Dellinger discussed the short and long-term effects of wrapping debt, including the advantages and disadvantages to ratepayers, and explained that wrapping the new debt obscured the true effect on rates for these projects.

Mr. Dellinger recommended the Commission require Petitioner to file a report within 30 days of closing on each of its long-term debt issuances with the terms of the new loan, the amount of debt service reserve, and an itemized account of all issuance costs. He also recommended that once the debt service reserve is fully funded in October 2027, tariffs should be amended to reflect this reduced expense or, alternatively, this revenue should be placed in a restricted account to be used to pre-fund a future debt service reserve or lower amounts that would need to be borrowed in

³ This recommendation appears to be based on an open market bond principal amount of \$49,764,952 and an SRF bond principal amount of \$110,547,808. OUCC Ex. 3, Attachment SD-01.

a future rate case. He also recommended the submission of annual reports until the proceeds from the new bond issuances are spent.

James T. Parks, Utility Analyst II with the Water/Wastewater Division, testified regarding Petitioner's \$269.2 million CIP. He stated the OUCC generally considers the projects in the CIP to be appropriate because they replace the existing WTP, aging water mains, and water mains in conflict with road projects. However, he took issue with the size, location, and some of the costs related to the proposed new WTP.

Mr. Parks testified Evansville is oversizing its new plant by 25% because of unsupported and overstated water demand growth forecasts that are contradicted by Petitioner's overall declining use. Mr. Parks recommended that instead of the proposed 50 MGD plant, Evansville size its new plant for 40 MGD.

Mr. Parks testified Petitioner's plant oversizing is caused by incorrect planning assumptions, including starting from overstated base year demands that use unsupported, rather than actual, flows. Mr. Parks also testified Petitioner was unable to explain the basis for its assumed annual growth estimates for each customer class and did not provide any data, report, or other analyses to support its assumptions. Using actual 2020 water sold and residential growth based on Indiana Business Research Center ("IBRC") population projections, Mr. Parks provided two alternative demand and growth estimates. Under the first estimate, he calculated the new treatment plant should be sized for a 34.5 MGD maximum day demand in 2050 with the average day demand at 24.6 MGD. Based on the second, more optimistic growth estimate, he calculated the new treatment plant should be sized for a 39.7 MGD maximum day demand and a 28.4 MGD average day demand. Mr. Parks recommended Petitioner re-evaluate AECOM's water demand forecasts, preferably using updated IBRC population forecasts based on 2020 Census data to confirm the new plant can be sized for 2050 average day and maximum day demands of 28.4 MGD and 40 MGD, respectively.

Mr. Parks discussed how Evansville's plans to build a new WTP have evolved since its filings in Cause No. 44760 in 2016. He testified AECOM's life cycle cost analyses did not address or include the residuals management facility's \$29,714,000 construction cost or the \$43,547,000 30-year operating and replacement cost (present worth). He testified the total 30-year life cycle cost would be an additional \$73,261,000. Mr. Parks also testified Petitioner's proposed surface WTP does not address the issues Evansville identified in Cause No. 44760, and AECOM's scoring matrix used to select Evansville's preferred alternative omits cold water induced water main breaks and the danger of barges damaging the intake structure. He noted that since 2016, Evansville has spent only \$2.506 million of the \$10 million total that was earmarked for planning and design of a new groundwater treatment plant.

Mr. Parks discussed the differences between the various WTP construction cost estimates provided by Evansville. He also noted Petitioner did not identify the project's overall contingency, but stated he considers the construction cost estimate to be an Association for the Advancement of Cost Engineering ("AACE") Class 3 estimate. He recommended Petitioner use a standard 10% contingency in its cost estimates to match the maximum contingency allowed by the Indiana Finance Authority.

Regarding Evansville's proposed relocation of the City Garage to allow for construction of the new WTP, Mr. Parks testified Evansville failed to evaluate placing the new WTP on an unused 20-acre site owned by Evansville adjacent to the existing WTP, which would eliminate the \$13.2 million City Garage relocation cost. Mr. Parks also disagreed that the water utility should pay the entire \$13.2 million cost of relocating the City Garage and constructing a substantially larger garage with more amenities. He testified approximately 32% of Petitioner's customers do not live within Evansville city limits and the water utility's funds should not be used to subsidize the Evansville Street Department by replacing an aged, average condition garage with a new, improved, larger and higher cost garage. Mr. Parks testified the Vanderburgh County Assessor determined the City Garage had a Replacement Cost New ("RCN") valuation of \$3,115,340 and a depreciated value of \$684,900. He recommended Petitioner only contribute the RCN cost of the existing garage along with \$154,600 of design fees (5% of the RCN), and \$197,000 in land acquisition costs or approximately \$3.5 million.

Regarding Evansville's water main replacement and relocation projects, Mr. Parks testified that, based on the amount of remaining funds available, Evansville is behind in its water main replacement program. Thus, Mr. Parks recommended Petitioner track its main replacements and annually submit a capital improvements reconciliation along with its IURC Annual Report, setting forth the projects completed, improvements implemented, the feet of water main replaced, and the costs thereof. In addition, to the extent planned projects are completed for less than the estimates in Cause Nos. 44760, 45073, and this case, Petitioner should use the savings in a prudent manner toward completion of only other needed water main replacement projects identified in Petitioner's prioritized water main replacement program at the discretion of Petitioner.

Mr. Parks concluded by recommending Petitioner be authorized \$113,015,000 to construct the new WTP and City Garage, which includes AECOM's estimated \$120,055,000 construction cost for the new 50 MGD plant reduced by 20% or \$24,011,000 to reflect the recommended reduced 40 MGD maximum day capacity, \$3.5 million for the City Garage, and 7.75% of non-construction costs. He further recommended Evansville conduct another life cycle cost analysis for a properly sized plant able to meet the 28.4 MGD design average day flow and the 40 MGD maximum day design with adjustments made to the estimated costs as identified by the OUCC.

Scott A. Bell, Director of the Water/Wastewater Division, addressed Petitioner's proposed residuals management facility and its decision to use a Guaranteed Savings Contract ("GSC") to construct the proposed new WTP. Mr. Bell stated Petitioner is seeking SRF funding to construct a residuals management facility, if necessary, and identified the costs comprising Petitioner's \$30 million estimate. He also explained that AECOM estimates the annual dewatering cost would be \$1.21 million per year, or \$36.3 million over a 30-year period, resulting in a total 30-year life cycle cost for the residuals management facility of \$73.3 million. He further noted, when adding the \$73.3 million 30-year life cycle cost to the \$230.93 million 30-year life cycle cost of the new WTP (Alternative 2B), the total project cost is estimated to be \$304.184 million over a 30-year period. However, Mr. Bell recommended that the Commission deny Evansville's inclusion of \$30 million in its SRF debt financing due to its pending application for a water quality standard variance that may eliminate the need for the residuals management facility.

Mr. Bell testified that, based on his experience, most regulated municipal utilities use the public bidding procedures set forth in Ind. Code ch. 36-1-12 when selecting a construction contractor to build water utility facilities. He recommended Evansville reevaluate its decision to use a GSC in constructing the proposed WTP. Further, if Evansville chooses to use a GSC, he recommended any unused budget amount should be retained in a restricted account only to be used for capital projects such as main replacements. He further recommended Petitioner should be required to report, within 60 days of final completion of the WTP project, whether any unused budget amount remains and how those funds will be used.

C. Evansville's Rebuttal Case. Mr. Baldessari testified he disagreed with the OUCC's calculation of its proposed overall rate increase and explained which of the OUCC's proposed adjustments Petitioner is willing and unwilling to accept. Mr. Baldessari also responded to Ms. Stull's recommendation that the Commission deny Evansville's request to implement the Phase I rate increase before the Test Year. Disagreeing with Ms. Stull's recommendation, he said nothing in Ind. Code § 8-1-2-42.7 prohibits a rate increase taking effect before the beginning of the Test Year; however, he indicated Evansville is willing to defer the first increase until the beginning of the Test Year if that is the Commission's preference.

Mr. Baldessari testified he also disagreed with the OUCC's recommended reductions to Petitioner's financing request and explained why he disagreed with the recommendations to reduce the debt issuances for the new WTP, residuals management facility, and City Garage relocation. Mr. Baldessari also responded to Mr. Dellinger's concerns and recommendations related to the terms of Petitioner's proposed financing. He explained Petitioner's disagreement with the OUCC's recommendation to eliminate the WIFIA fees, impose an interest rate cap, and submit annual project expenditure reports but indicated agreement with eliminating the PER costs, using lower assumed bond interest rates, placing the revenue from debt service reserve requirements into a restricted account, truing-up the financing, and issuing bonds within two years from the date of the Order. Based on these changes, Mr. Baldessari testified a borrowing authority of \$235.705 million should be approved.⁴

Mr. Baldessari sponsored a revised revenue requirement in Attachment DLB-R1 of Petitioner's Exhibit 1-R incorporating the adjustments Mr. Baldessari accepted on rebuttal. Mr. Baldessari testified the original proposed aggregate rate increase was 35.54% and is now proposed to be 31.24%. He testified, if the Commission would prefer to keep the originally proposed 5-phase increase, then the increases would be 6.19% for Phase I, 6.19% for Phase II, 5.87% for Phase III, 5.52% for Phase IV and 4.52% for Phase V.

Regarding the OUCC's recommendation to reduce the capacity of Evansville's new WTP from 50 MGD to 40 MGD, Mr. Breese disagreed and testified AECOM's population and growth projections are reasonable. He explained that population growth and water demand projections are not an exact science, but there are general principles that constitute good practice in facility planning and sizing that apply directly here and informed AECOM's recommendation on the plant

⁴ In its October 26, 2021 response to the Commission's October 22, 2021 Docket Entry, Petitioner clarified that its request for financing authority of \$260 million in its case-in-chief reflected an extra 10% in contingency to allow for higher than expect construction bids, but Petitioner is willing to forego the extra contingency amount. Pet. Ex. 6, p. 3.

size. First, projections should be developed which reflect peak day demand. Mr. Breese testified actual peak day demands have routinely exceeded 30 MGD in recent years and exceeded 35 MGD in the summer of 2016, peaking at 37.5 MGD.⁵ He opined it is incredibly risky for Evansville to consider sizing its new plant just 2.5% higher than actual demands recorded 5 years ago. He testified he has been doing master planning and design of drinking water treatment plants for over 35 years, and he has never seen a proposal to size a new WTP for a capacity less than 20% larger than recently recorded peak day demands and doing so would constitute poor engineering practice.

Second, sufficient reserves for the unexpected must be maintained. Mr. Breese testified that in sizing a plant, a reasonable allowance should be included for growth. As examples, Mr. Breese noted the potential development of a large industrial water user coming into the service area and the I-69 expansion connecting Evansville to Indianapolis, which could lead to additional industrial and commercial growth within the planning period.

Third, a planning period of reasonable length should be used. Mr. Breese explained the importance of selecting a planning period that was not too short and testified that planning periods of 25-30 years are typical in WTP design.

And fourth, it generally costs more to build a plant in stages than it does to build the same plant in fewer stages. Mr. Breese testified AECOM estimated a reduction in the proposed plant capacity from 50 to 40 MGD would only result in an estimated cost savings of 7%. Mr. Breese testified he does not believe the modest cost savings is worth the risk posed by building a new plant which is only marginally larger than the current peak demands only to later incur a higher cost to build to the capacity AECOM's planning shows is prudent now. He testified that it remains AECOM's firm opinion that 50 MGD is the appropriate capacity of the plant especially recognizing the potential for growth inducing impacts of the I-69 development.

Mr. Breese also explained why groundwater was not used in the WTP plant design. He testified that, as explained in Attachment SMB-1 of Petitioner's Exhibit 4, it would not be cost effective to develop groundwater supply to a sufficient extent as to supplant surface water entirely as a source of supply. He also disagreed with the OUCC's contention that the use of groundwater would ease or eliminate the need and cost for a residuals management facility. He stated this contention is a gross over-simplification and explained why this would not change AECOM's recommendation that the WTP continue to use 100% Ohio River as its source of supply.

Finally, Mr. Breese disagreed that a 30% contingency included in the cost estimate is inappropriate. He reiterated that the construction costs were based on a planning level document and the design level was not sufficiently developed to support an AACE Class 3 estimate. He noted the cost estimates were prepared by estimating professionals and were in line with costs for other comparable facilities.

Regarding the relocation of the City Garage, Mr. Labitzke disagreed with Mr. Parks' recommendation that Evansville only be authorized \$3.5 million to relocate the City Garage. He

⁵ Mr. Breese noted the data after 2017 may be skewed and reflect inordinately high treated water pumping due to a flow meter being out of calibration for an extended period of time.

testified AECOM evaluated several sites for locating the new WTP, and it was determined that relocating the new plant to the City Garage site and building a new City Garage at an offsite location was the most cost-effective option. He stated that in relocating the City Garage, Evansville considers costs beyond the fair market value of the property, including current building codes, Americans with Disabilities Act accessibility, parking requirements, electrical service, heating types, restroom facilities, etc. Mr. Labitzke explained the proposed \$13.2 million cost for relocating the City Garage considers all these additional costs.

Mr. Labitzke also explained his disagreement with Mr. Parks' alternative recommendation that the new WTP site be moved to another site just south of the proposed City Garage site. He testified this site was not considered because it is part of the ponding area governed by the Evansville Vanderburgh Levee Authority and Army Corps of Engineers and is used for flood storage when pumps used to pump stormwater to the Ohio River cannot keep up. He stated that without this ground remaining low and used for stormwater storage, homes in Evansville would flood during the 1% storm. Finally, Mr. Labitzke responded to Mr. Bell's concerns regarding Evansville's decision to use a GSC to construct the new WTP and explained why Evansville continues to believe this is the appropriate method to construct the plant.

7. **Commission Discussion and Findings.** Ind. Code § 8-1.5-3-8(a) and (b) requires that a municipally owned water utility furnish reasonably adequate services and facilities and that the utility's rates and charges be nondiscriminatory, reasonable, and just. Section 8(c) further identifies the revenue requirements to be considered in establishing reasonable and just rates and charges, including: (1) all legal and other expenses incident to the utility's operation; (2) a sinking fund for the liquidation of bonds or other obligations; (3) debt service reserve; (4) working capital; (5) extensions and replacements to the extent not provided for through depreciation; and (6) taxes. A municipal utility's rates and charges for water service is subject to Commission approval. Ind. Code § 8-1.5-3-8(f).

Based on its rebuttal filing, Evansville requests approval for an overall across-the-board increase of 31.24%, or a \$13,907,291 increase in revenue, to be implemented in five phases. Evansville also seeks approval for financing authority in an amount not to exceed \$235,705,000. The OUCC recommended the Commission approve an overall across-the-board increase of 20.84%, or a \$9,185,727 increase in revenue, to be implemented in two phases. The OUCC took issue with certain aspects of Evansville's debt funded capital improvements, recommending Evansville's financing authority be reduced to \$167,000,000. The OUCC also challenged several of Evansville's pro forma revenue and expense adjustments.

A. **Evansville's Proposed Financing Authority.** In its Petition, Evansville indicated it was requesting authority to issue bonds in the total amount of \$260 million. However, in its case-in-chief, Mr. Baldessari testified Evansville was requesting financing authority of only \$238,165,000 based on estimated construction costs of \$220,229,000 (of which \$175,838,000 is related to construction of the 50 MGD WTP) and non-construction costs of \$17,936,000. Pet. Ex. 2, p. 11 and Attachment DLB-1, p. 6. The OUCC proposed a total financing authority of \$167,000,000. On rebuttal, Evansville reduced its proposed financing amount to \$235,705,000, which reflects a reduction in the assumed interest rate, elimination of the PER costs as recommended by the OUCC, changes that flow through (i.e., capitalized interest, underwriter's

discount, and IURC bond fee), and elimination of the contingency. However, no change was made in its proposed cost for the new WTP.

Evansville’s requested financing to build a new 50 MGD WTP is a multi-generational investment. Evansville’s existing 60 MGD WTP, much of which was originally constructed in the 1890s, presently serves as the source of drinking water for customers across multiple counties in Southwest Indiana. The OUCC did not dispute that the current plant is past its useful life and needs to be replaced. Instead, the OUCC took issue with the overall capacity of the plant and recommended a reduction from 50 MGD to 40 MGD. To reflect the proposed 20% capacity reduction, the OUCC proposed a 20% decrease in Petitioner’s proposed construction costs as well as reductions in the cost of replacing the City Garage, which is to be relocated to accommodate the new WTP. The OUCC further recommended removal of Petitioner’s proposed residuals management facility in the amount of \$30 million as being premature due to Petitioner’s outstanding request for a variance that may eliminate the need for such a facility.

The reconciliation between Evansville’s and the OUCC’s proposed WTP construction costs to be financed is as follows:

| | |
|----------------------------------------|----------------------------|
| Petitioner’s Estimated WTP Cost | \$175,838,000 ⁶ |
| Less: OUCC Capacity reduction | \$28,175,000 |
| Less: Residuals Management elimination | \$30,000,000 |
| Less: Garage Relocation reduction | \$9,700,000 |
| OUCC’s Estimated WTP Cost | \$107,963,000 ⁷ |

Ind. Code § 8-1.5-3-8(c)(5) provides that reasonable and just utility rates include those that produce sufficient revenue to provide adequate money for making extensions and replacements to the extent not provided for through depreciation. Evansville seeks adequate money from a combination of debt and rate revenues to replace its WTP as well as complete other projects in its proposed CIP. Regarding its debt, Evansville proposes financing authority totaling \$235,705,000, which would be made up of two bond issuances, one that will potentially be open market in the amount of \$64,090,000 and another issuance through the State Revolving Fund in the amount of \$171,615,000. The financing will fund construction of several projects as well as associated non-

⁶ As noted earlier, Mr. Baldessari testified a scoping update for the new WTP had caused a slight increase in the total estimated construction cost identified by Mr. Breese, but Evansville did not want to delay the case for the minimal adjustment it would produce. Pet. Ex. 2, p. 16. We note that Mr. Baldessari’s estimate is approximately \$5,064,000 less than that reflected by Mr. Breese in Petitioner’s Exhibit 4, Attachment SMB-1, Table 10-3.

⁷ OUCC Ex. 1, Workpaper MAS-6, p. 1.

construction costs. The OUCC proposes financing authority of \$167,000,000, with the difference primarily driven by certain costs associated with construction of the new WTP as noted above.⁸

Our standard typically applied for approving municipal utility financing is whether the “request to issue long-term debt to fund capital improvements and pay for certain operation and maintenance expenses is reasonable and necessary in order for [the municipal utility] to provide adequate and efficient water service.” *City of Michigan City*, Cause No. 44538, p.10 (IURC May 27, 2015). As noted above, the OUCC’s proposed reduction of approximately \$28 million for the reduced capacity from 50 to 40 MGD, its removal of \$9,700,000 in costs related to relocating the City Garage, and the elimination of the residuals management facility for \$30 million, largely make up the difference between the OUCC’s recommended construction costs for the new plant, which leads to the difference between the OUCC’s proposal that Evansville be authorized to borrow \$167 million and Petitioner’s original request to borrow \$238 million. Thus, we address each of these issues below in determining whether the proposed improvements are reasonable and necessary for Petitioner to provide adequate and efficient water service.

1. Water Treatment Plant Capacity. As noted previously, the proposed WTP is a multi-generational asset serving Southwestern Indiana. Petitioner proposes to replace its existing 60 MGD plant by constructing a 50 MGD capacity facility based on the recommendation of its consultant, AECOM, and Witness Breese. The OUCC recommended the proposed plant capacity be reduced to 40 MGD. We have previously set forth factors to be considered when determining the appropriate level of capacity for purposes of public water utilities and find we should be guided by the same concepts here. Those factors are as follows:

- (1) The prudence of the decision to construct the new plant;
- (2) The reasonableness of the demand forecasts;
- (3) Whether there were changed circumstances during construction necessitating a reevaluation of the decision to continue with construction;
- (4) The lead time to construct new facilities;
- (5) The necessity to provide adequate and reliable utility service;
- (6) The utility’s need for a margin of safety or reserve;
- (7) The financial impact on the utility of a finding of excess capacity and the long-term effect on the ratepayers; and
- (8) The risk that changes in demand projections will impact the utility’s reserves and ability to serve its customers.

⁸ The remaining difference between the proposals consists of the OUCC’s elimination of: (1) two line items in the total amount of \$1,100,000; (2) \$8.5 million of capitalized interest; and (3) flow through adjustments to the underwriters fees and IURC fee based on the total amount authorized. OUCC Ex. 3 at pp. 3-4.

Indiana-Am. Water Co., Inc., Cause No. 40703, pp. 15-16, 1997 WL 913208 (Dec. 11, 1997), citing *N. Ind. Public Serv. Co.*, Cause No. 37458, 1985 WL 1208669 (IURC June 19, 1985).

The OUCC did not take issue with Evansville's decision to construct a new WTP. In addition, construction on the new WTP has not yet commenced and no issues were raised concerning the lead time for construction. Therefore, no further consideration of the first, third, or fourth factors are necessary.

With respect to the reasonableness of the demand forecasts, we find the evidence demonstrates that although Evansville's growth projections used in projecting future water demands are somewhat optimistic, the demand forecasts are within the range of reasonableness. Mr. Breese explained AECOM's demand projections anticipate average day demand and peak day demand rising to 36.5 MGD and 49.4 MGD, respectively, by the year 2050. OUCC Witness Parks argued these projections were inflated because Petitioner used forecasted 2020 water demand that exceeded actual 2020 water demand and an unsupported 1.5% residential population growth rate as compared to a 0.16% growth rate that is supported by 2020 Census Data and the IBRC population forecast. The OUCC projected average day demand and peak day demand rising to 28.4 MGD and 39.7 MGD, respectively, by the year 2050.

While we agree with Mr. Breese that projecting population growth and water demands is not an exact science, particularly when you are projecting 30 years into the future, we also agree with Mr. Parks that Petitioner should have performed a more detailed analysis of available data to provide additional support for its chosen inputs and encourage Evansville to do so in the future when evaluating potential projects. Nonetheless, based on the evidence presented, we find AECOM's projections of future water demands in this case are reasonable when consideration is given to some of the broader general principles used in facility planning, such as peak day demand, anticipated and unforeseen growth, an appropriate planning period, and costs.

On rebuttal, Mr. Breese testified Evansville's actual peak day demands have routinely exceeded 30 MGD in recent years, and exceeded 35 MGD in the summer of 2016, peaking at 37.5 MGD. This is supported by data on raw and treated water for the period 2013–2018 included in Attachment SMB-1 of Petitioner's Exhibit 2, which showed many days exceeding 30 MGD. The OUCC's demand forecast projects a maximum day demand in 2050 between 34.5 MGD and 39.7 MGD. In other words, the OUCC's forecasted demand in 30 years is essentially equal to demand recently experienced in 2016. If the Commission were to accept the OUCC's recommendation that 40 MGD is the appropriate capacity, this would leave Evansville with a new plant sized to accommodate peak day demands just 2.5% higher than actual demand recorded five years ago.

The anticipated and unforeseen growth in the Evansville area leads us into a consideration of the factors concerning the utility's need for a margin of safety or reserve and the risk that changes in demand projections will impact utility reserves and the ability to serve customers. While we agree that historical trends in population growth and water demands are an appropriate place to start when considering future growth, a reasonable allowance should be included for both reasonably anticipated and unforeseen growth. Mr. Breese testified that AECOM's demand projections include an allowance for potential unforeseen growth associated with industrial and commercial expansion along the I-69 corridor. However, it appears the OUCC did not consider

the same potential for unforeseen growth in its proposed demand projections, and there is little margin in the OUCC's proposed 40 MGD plant.

While commercial and industrial growth associated with the I-69 expansion is not guaranteed, the project is expected to generate, among other things, a positive regional economic impact and Petitioner's evidence supports this. Within the last two years, the contractual maximum demand associated with the Toyota expansion in Gibson County has increased by 1.5 MGD. Pet. Ex. 1-R, Attachment DLB-R2, p. 37. Further, in response to the Commission's Docket Entry Request dated October 6, 2021, Petitioner provided a list of commercial and industrial project requests it has received over the past 12 months. Pet. Ex. 5, Attachment IURC 1-2. The list includes 13 different project requests ranging from 550,000 gallons per day to 9 MGD. After making the multi-generational investment in a new treatment plant, Evansville, its customers, and the entire State of Indiana will expect Evansville to be able to respond to inquiries for service for economic development affirmatively. In addition, as discussed further below, we find the risk associated with Evansville being unable to reliably meet demand, or to support economic development in the region, outweighs the benefit associated with building a smaller plant in the event such demand does not materialize.

Regarding the financial impact on Evansville of a finding of excess capacity and the long-term effect on ratepayers, Mr. Breese testified on rebuttal that AECOM estimates a reduction in the proposed plant capacity from 50 MGD to 40 MGD will result in an estimated cost savings of approximately 7%. He further testified the overall cost of subsequently expanding to 50 MGD would end up being more than it would have cost to construct the 50 MGD plant now. In response to the Commission's October 6, 2021 Docket Entry, AECOM estimated that, due to completing work over multiple contracts and mobilization/demobilization costs, a 10 MGD expansion in the future might cost \$15-20 million in 2021 dollars.

While reducing the capacity to 40 MGD could save ratepayers money in the short-term, the record shows this savings is estimated to be minimal (i.e., \$11 million out of an approximately \$175,838,000 total construction cost). And, to achieve that savings, Petitioner would need to know that its future demands will not exceed 40 MGD, which we find is a risky assumption when Evansville's historic demands have nearly reached that level. Further, as evidenced by Petitioner's response to the Commission's Docket Entry, attempting to add additional capacity later could be more costly for both the utility and ultimately its ratepayers. Evansville's inability to meet future demand or to support economic development in the region could also have a significant financial impact on both the utility and its customers. We agree with Mr. Breese that a modest cost savings of \$11 million is not worth the risk posed by requiring Petitioner to modify its plans and build a 40 MGD plant.

Finally, regarding the necessity to provide reasonably adequate and reliable utility service as required by Ind. Code § 8-1.5-3-8(a), we find this factor supports Evansville's proposal to build a 50 MGD plant. As noted earlier, the OUCC's proposed 40 MGD capacity is only 2.5% higher than actual peak day demands recorded in 2016, leaving Evansville with a small margin of error and little room for unforeseen potential growth over the 30-year planning horizon.

Accordingly, based on the evidence presented, we find Evansville's proposed construction of a 50 MGD plant to be reasonable and should be approved. In addition, because we are approving

Petitioner's proposal, we need not address the OUCC's proposed estimate for a 40 MGD plant. However, we note there was a substantial amount of discussion between the parties concerning the amount of contingency that was included in Petitioner's cost estimate for the WTP and whether the estimate was an AACE Class 3 or 4 estimate. While we find the required true-up process addressed later in this Order will address any over- or under-estimating of costs and applied contingencies, we find that in the future, Evansville shall apply a single contingency as a single line item to the total project costs and not embed various contingencies within individual project line items within the cost estimates.

2. Residuals Management Facility. Evansville requested \$30 million be included as part of its debt issuance to construct a residuals management facility to address residual mercury levels. OUCC Witness Bell testified it is premature to approve \$30 million in funding for the residuals management facility because Evansville has a mercury variance application pending with the Indiana Department of Environmental Management ("IDEM"). He recommended Evansville's inclusion of \$30 million in its SRF debt financing be denied until a final determination has been made on the pending variance application. If construction of the facility cannot be avoided, he suggested Petitioner could request a subdocket be opened to request authority to issue debt to fund the residuals management facility. He also noted that the estimated construction cost of the residuals management facility is only \$17,479,000, with an additional \$12 million for associated non-construction cost and contingency. Mr. Bell also recommended Evansville reconsider the use of groundwater supply that may avoid the cost of constructing and operating such a facility.

On rebuttal, Mr. Breese testified that inclusion of the residuals management facility will not change the scope or design of the remainder of the WTP project. He explained that, as documented in Petitioner's Exhibit 4, Attachment SMB-1, AECOM evaluated the use of groundwater to form all, or part, of the supply to the plant and determined it would not be cost effective. He further testified that, contrary to the OUCC's assertion, it is highly unlikely using groundwater would eliminate the potential need for residuals handling at the plant. Mr. Baldessari testified on rebuttal he disagreed with Mr. Bell's recommendation to cut the borrowing by \$30 million for the residuals management facility because the OUCC's proposed subdocket approach would add delay, red tape, and cost to completing the needed improvements. Mr. Baldessari testified the proposed financing should be approved now, and Evansville will not issue the bonds for the residuals management facility if the project is not required. He further testified, since all debt issued by Petitioner will go through the true-up process, the rates and charges will be adjusted for any debt issued or not issued by Petitioner.

Although Evansville has applied for a mercury variance, the evidence demonstrates that: (1) Evansville's National Pollutant Discharge Elimination System permit imposes a mercury limit; and (2) Evansville cannot meet that mercury limit without the additional treatment facility. Hence, only if the variance is granted, will the residuals management facility not be needed, and Evansville has committed that it will reduce its actual borrowing by \$30 million if the facility is not needed. If, on the other hand, the variance is not granted, there is no dispute that the residuals management facility is needed.

Prior to closing on the proposed bonds and loans, Evansville will know, under the GSC, the maximum WTP project costs along with the related non-construction costs, including the

estimated capitalized interest. We further note the debt service on the bond issue will not be reflected in rates until even later, i.e., April 1, 2024. Given that Evansville will true up the debt service to be reflected in rates at April 1, 2024 and thereafter to reflect the actual amount borrowed, we see no reason to deny financing authority today for this facility. We agree with Mr. Baldessari that requiring Evansville to again seek authority for funding in a separate subdocket will only add additional costs and administrative burdens, which are not necessary when any changes in the amount of debt issued can ultimately be addressed through a true-up process. Accordingly, we find Petitioner should be authorized to borrow up to \$30 million for the residuals management facility in this Cause, subject to the condition that the funds are not borrowed if the facility is ultimately not required.

3. Relocation of City Garage. Petitioner requests \$13.2 million in financing to: (1) purchase an existing City Garage and the land it is located upon for the construction of the new WTP; and (2) pay for the construction of a new, larger, and enhanced City Garage on another site. Mr. Baldessari testified the cost of relocating the City Garage is considered a cost of acquiring real estate for the water utility, but the water utility cannot use the condemnation process to acquire the property as it is already dedicated to a public use. Mr. Baldessari testified if Petitioner could condemn the property, it could simply pay fair market value for it through the condemnation process. However, because Petitioner cannot condemn the property, it must negotiate the purchase price, and it is reasonable under such circumstances for the seller (i.e., the City of Evansville) to require the utility to provide funds to replace the City Garage.

OUCW Witness Parks recommended the Commission authorize Petitioner to recover only \$3.5 million for the replacement cost of the existing City Garage and the value of the land. As an alternative, he discussed the possibility of using a 20-acre parcel owned by the city of Evansville adjacent to the current WTP. In arriving at his recommendation, Mr. Parks noted the City Garage consists of a 52,800 square foot garage building with a 12,000 square foot office located on approximately 3.5 acres of city-owned land, the parking/storage areas are unpaved, and there does not appear to be any storm water detention basin; whereas, the proposed new City Garage will be 70,000 square feet with office facilities of 15,000 square feet and have paved parking, separate equipment storage, and a storm water detention pond. Mr. Parks testified the Vanderburgh County Assessor determined a Replacement Cost New valuation for the garage of \$3,115,340. He noted that property acquisitions are based on appraised fair market value and cited to an Indiana Department of Transportation manual that raises the concept of “functional replacement” and recognizes additional financial assistance may be necessary when typical fair market value compensation may be insufficient to restore it to the level needed to provide the same services and betterments or enhancements are only allowed where necessary to comply with existing laws. Mr. Parks testified Evansville did not provide an estimate of the additional costs for the increase in capacity and other betterments and enhancements for the new City Garage or determine the value of the existing City Garage. Therefore, he recommended Petitioner be authorized \$3.5 million in funding, which was derived from the Assessor determined replacement cost of \$3,115,340, \$154,600 of design fees, and \$197,000 in land acquisition costs.

On rebuttal, Mr. Baldessari asserted Petitioner is asking for funding to pay the “functional replacement” of the City Garage, which Evansville attempted to monetize in Petitioner’s Exhibit 4, Attachment ML-5. Mr. Labitzke testified the costs of relocating the City Garage include more than the fair market value of a property. He stated Evansville follows the Uniform Relocation

Assistance and Real Property Acquisitions Policies Act, which requires consideration of parameters for functional equivalency and highest and best use when acquiring new property, such as meeting all current building codes, ADA accessibility, and parking requirements. He stated these costs were considered and included in the \$13.2 million preliminary relocation cost. As for the alternative site identified by Mr. Parks, Mr. Labitzke explained why the land was not feasible for the new WTP, including because it is used for flood storage to protect Evansville during storms.

Based on the evidence presented, we find Petitioner has provided a reasonable explanation (i.e., flood control and storage) for why the potential site identified by Mr. Parks is not a viable location for the new WTP. Therefore, we must consider the appropriate amount of financing for relocation of the City Garage. Contrary to Petitioner's assertion, the evidence shows the proposed \$13.2 million new City Garage is not simply a functional replacement of the existing City Garage. Instead, as noted by the OUCC, the estimated cost of the new City Garage includes significant upgrades in building size and capacity as well as other improvements. Petitioner offered no explanation for why the size upgrades and enhancements from what currently exists is reasonable or required by law. Consequently, we agree with Mr. Parks that authorizing the full \$13.2 million would result in a subsidy from water utility ratepayers to the City of Evansville's Street Maintenance Department—a subsidy we find particularly inequitable given that 32% of Evansville's water utility customers reside outside of city limits and will receive no benefit from a new and improved City Garage. Therefore, because Evansville failed to provide sufficient evidence demonstrating that its cost estimate was reasonable and not in excess of the direct or functional replacement cost of the City Garage and associated land, we find the OUCC's proposed \$3.5 million to be the best supported valuation and should be approved for financing the relocation of the City Garage.

4. Other Issues. The remaining issues separating the amount of the OUCC's and Evansville's financing proposals are: (1) the OUCC's recommendation to eliminate \$750,000 in PER expense and \$350,000 for estimated WIFIA fees; (2) elimination of \$8.5 million in capitalized interest; and (3) flow through adjustments to underwriters fees and the IURC fee based on the total amount authorized. The OUCC also raised concern with the OUCC using a GSC to construct the new WTP.

With respect to the \$750,000 in PER expense, Petitioner conceded on rebuttal that this expense was funded through Cause No. 44760 and agreed it should be removed from the proposed financing in this Cause. As to the \$350,000 in WIFIA fees, the OUCC opposed authorizing funding for these fees because it was uncertain whether Evansville would apply for the loan. However, on rebuttal, Mr. Baldessari explained the Indiana Finance Authority has filed a Letter of Interest to receive WIFIA funding, and Evansville intends to move forward with the loan to take advantage of lower cost borrowing. As the OUCC acknowledged, a WIFIA loan should produce significant savings for customers, such as through reduced capitalized interest. Therefore, we find the \$750,000 PER expense should be removed from Petitioner's requested financing authority and the \$350,000 estimate for WIFIA fees is reasonable and should be approved for inclusion in Petitioner's financing authority.

Regarding capitalized interest, we only adjusted the amount for the open market bond since that bond was reduced due to reduction in the cost of the City Garage. The Commission did not alter the amount of the SRF bond. The final amount of capitalized interest for the open market

bond and the SRF bond will be known (along with the final project costs) before the closing on the loan and therefore reflected in true-up and customer rates.

The remaining issues concerning Petitioner's proposed financing relate to Mr. Dellinger's recommendations regarding an interest rate cap, debt service reserve requirements, and true-up reporting requirements. With respect to the interest rate cap, Mr. Dellinger recommended a maximum interest rate authorization of 4.75%. Mr. Baldessari identified on rebuttal his concerns regarding capping interest rates in an uncertain market. He explained an interest rate cap could lead to delayed financing and additional costs if Evansville is required to go back to the Commission for approval. He further asserted an interest rate cap is unnecessary because Evansville will file a true-up report after the bonds are issued and will true-up the bond sizing for any changes to the project costs resulting from the differential in the assumed interest rates and the final interest rates, including capitalized interest, costs of issuance and underwriter's discount. Given that Evansville will competitively bid its open market bonds in accordance with Ind. Code § 5-1-11-3, we agree with Mr. Baldessari that a cap on interest rates is not necessary here. We are satisfied that any change in interest rates can be addressed in the true-up report Petitioner has agreed to file. Therefore, we find Mr. Dellinger's recommendation to cap the interest rate at 4.75% is unnecessary and is not approved.

With respect to debt service reserve, Mr. Dellinger testified Petitioner's debt service reserve should be placed in a restricted account and Petitioner should be required to provide notice if it spends any funds from its debt service reserves for any reason other than to make the last payment on its current or proposed debt issuances. He also recommended specific reporting requirements related to spending from the debt service reserve. On rebuttal, Mr. Baldessari testified Evansville agrees to place the revenue from the debt service reserve requirement in a restricted fund to either pre-fund a future debt service reserve fund or to lower future borrowing amounts. However, he stated Evansville does not want to have to go through another true-up process and reduce rates once the debt service reserve is fully funded. We agree with Mr. Dellinger's recommendation and find that, once the debt service reserve has been fully funded, Petitioner should place the revenue from the debt service reserve requirement in a restricted account. As for Mr. Dellinger's recommendations for the true-up process, we address those recommendations at the end of this Order.

Regarding Evansville's proposal to use a GSC to construct the new WTP, Mr. Labitzke explained in rebuttal that Petitioner will send a Request for Proposal to all eligible contractors and a GSC will be selected based on qualifications. When plans are designed to a 60% level, the contractor will submit its guaranteed maximum price and Petitioner then decides whether to accept that price or competitively bid the project. Mr. Labitzke explained the GSC method allows Evansville the best opportunity to control the contractor, project costs, and total project risk. However, he indicated Petitioner was willing to accept the OUCC's recommendation regarding unused project funds and reporting requirement. While many municipal utilities use the public bidding process, Ind. Code ch. 36-1-12.5 allows the use of a GSC, and no evidence was offered demonstrating that Petitioner should not be allowed to do so. Accordingly, we find no reason to limit Petitioner's ability to use a GSC. However, given Evansville's agreement, we find Petitioner shall retain any unused budget in a restricted account for use with capital projects, such as main replacements, and file a report indicating the amount and use of any unused funds within 60 days after final completion of the WTP.

5. Conclusion. In accordance with our discussion herein, we find Petitioner’s proposed projects are reasonably necessary and Petitioner’s proposed financing is a reasonable method for financing these improvements. Therefore, we find Petitioner should be authorized to borrow \$225,062,000 to construct a new 50 MGD WTP, a residuals management facility, and to relocate the City Garage, with such borrowing split between an open market bond of \$53,447,000 and SRF bond of \$171,615,000 as shown below.⁹ If IDEM does not require the residuals management facility, Evansville’s financing authority shall be reduced by \$30 million.

| | | |
|---------------------------------------------------------------------|--|----------------|
| Estimated Construction, Engineering and Contingency Costs: | | |
| Water Treatment Plant - SRF | | \$ 132,638,000 |
| Water Treatment Plant (TSS/Mecury) - SRF | | 30,000,000 |
| Water Treatment Plant - Relocation of City Garage - Open Market | | 3,500,000 |
| Road Relocations - OM | | 39,806,000 |
| CES/RPR - Road Relocation Projects/Program Management Planning - OM | | 4,585,000 |
| Total Estimated Construction, Engineering and Contingency Costs | | 210,529,000 |
| Estimated Non-Construction Costs: | | |
| Underwriter's Discount (1%) [OM Bond *.01] - OM | | 534,470 |
| Preliminary Engineering Report - SRF | | - |
| Capitalized Interest - OM | | 4,318,199 |
| Capitalized Interest - SRF | | 7,508,156 |
| Legal, Financial, Contingencies, rounding | | 1,609,338 |
| IURC Bond Fee (Total Funding *.0025) | | 562,655 |
| Total Estimated Non-Construction Costs | | 14,532,818 |
| Total Estimated Project Costs | | \$ 225,062,000 |
| Proposed Open Market Bond | | \$ 53,447,000 |
| Proposed SRF Bond | | \$ 171,615,000 |
| Total Bonds Issued | | \$ 225,062,000 |
| Total Borrowing Authority | | \$ 225,062,000 |

B. Petitioner’s Revenue Requirements.

1. Revenue Adjustments. Evansville proposed seven adjustments to base period operating revenues to arrive at its proposed pro forma present rate operating revenues at present rates of \$44,267,951. Included in these proposed pro forma revenues is; (1) a \$753,658 decrease to operating revenues to reflect declining consumption during the period April 2022 through March 2023¹⁰ and then further throughout the Test Year; (2) a COVID adjustment described on Petitioner’s Exhibit 2, Attachment DLB-1, p. 21; and (3) an adjustment to account for the sewer utility portion of general expense, which we discuss in operating expenses below.¹¹

⁹ Based on Mr. Baldessari’s rebuttal testimony and Petitioner’s October 26, 2021 Docket Entry response to Request No. 8, no contingency was included for higher than expected construction bids.

¹⁰ This amount is embedded in the (\$1,630,667) reflected in Adjustment 12 of Petitioner’s Exhibit 2, Attachment DLB-1.

¹¹ See also Pet. Ex. 2, Attachment DLB-1, p. 32.

The OUCC generally accepted each adjustment, with certain exceptions discussed further below, and proposed additional operating revenue adjustments to remove sales tax expense from residential revenues and to reflect additional sale for resale revenues from Gibson Water. The OUCC accepted all of Evansville's revenue adjustments associated with the COVID-19 pandemic except for the adjustment to residential sales. For that, Ms. Stull accepted the methodology but applied it to a larger base number, which Petitioner accepted on rebuttal. The OUCC ultimately recommended pro forma water operating revenues at present rates of \$44,087,215. As discussed below, Evansville generally accepted each of Ms. Stull's recommendations on rebuttal, apart from her adjustment to reflect additional revenues from Gibson Water.

a. **Gibson Water.** In its case-in-chief, Petitioner did not propose any adjustment to operating revenues to reflect increased water sales to Gibson Water. Mr. Baldessari testified that no additional revenues would be generated from the increase in water sales to Gibson Water, and any additional revenues that could possibly be generated, would not be realized until after the Test Year. Ms. Stull testified she disagreed with Mr. Baldessari's assessment because Gibson Water anticipates it will have increased demand from its customers soon, which will result in additional water sales for Evansville. Ms. Stull estimated additional demand of 300,000 gallons per day based on the three-year revenue allowance included in the contract amendment entered into between Petitioner and Gibson Water. She recommended a revenue adjustment to reflect the expected additional daily consumption of 300,000 gallons per day from Gibson Water, or \$318,645 on an annual basis.

On rebuttal, Mr. Baldessari testified he disagreed with Ms. Stull's proposed adjustment for Gibson Water. He testified there is an issue with assuming Petitioner will sell an additional 300,000 gallons per day prior to the Test Year because this amount is not sufficiently certain to be relied on for ratemaking. He testified the 300,000 gallons per day was an assumed amount used for purposes of the agreement because neither Evansville nor Gibson Water know how much or how soon the additional demand will be required. Mr. Baldessari testified that in the event the assumed 300,000 gallons per day does not materialize each year, Petitioner would have a shortfall in revenues needed to support its annual revenue requirements over a three-year period.

To address the additional revenues received from Gibson Water, Mr. Baldessari proposed that Petitioner prepare a true-up report for its proposed Phase V rate increase to account for any additional revenues. He testified to the extent Petitioner is or is not realizing additional revenues from the agreement with Gibson Water, Evansville would adjust Phase V rates through the true-up process. With respect to the incremental revenues Evansville receives from Gibson Water before the true-up, Mr. Baldessari explained the process Evansville agreed to with Gibson Water to determine the incremental revenues is akin to the Commission's main extension rules, which now apply to municipalities. He testified Evansville's investments in the facilities to provide Gibson Water with more capacity is essentially additional E&R that is not being funded and has not been otherwise funded. Thus, the revenues that are assumed in the contract to come from Gibson Water should either: (1) not be included in pro forma revenues; or (2) be offset with additional E&R equal to the revenues, and the net effect is the same.

The Second Amendment to the Agreement ("Agreement") with Gibson Water allows Gibson Water to receive a credit against the cost of investment needed by Evansville to

provide additional capacity. The credit will be equal to the three years of incremental revenues to be generated. While it would seem reasonable to factor the additional revenues received from Gibson Water into the rates, we also must consider the terms of the Agreement. We agree with Petitioner that the Agreement allows for a three-year revenue allowance that Evansville will use as capital needed to provide additional capacity to Gibson Water. Municipal utilities receive their capital for such investment either from debt financing or from the E&R component of the revenue requirement. Here, the cost of these improvements needed to supply Gibson Water was not included in the revenue requirement. We also note that although Petitioner included the capital investments for Gibson Water in its debt service under Cause No. 45073, Mr. Baldessari explained Evansville assumed it would receive additional revenues from Gibson Water to pay for these improvements. The project cost to meet the capacity needs of Gibson Water is estimated to be \$4,137,476. The project is to be funded as follows:

| | |
|---------------------------|--------------|
| Evansville Contribution | \$ 955,935 |
| Gibson Water Contribution | \$ 3,181,541 |
| Total Project Cost | \$ 4,137,476 |

There was no dispute that Evansville’s contribution to the project will come from the additional revenues received by Gibson Water. In addition, as noted by the OUCC in its Exhibit 3, Attachment MAS-3, the Agreement requires a reconciliation of the revenue allowance. At the True-Up Date, a reconciliation between the estimated revenue allowance and actual revenues based on Gibson Water’s exact usage will be completed and an adjustment to the capital contribution amounts incurred by the parties will occur. Therefore, Evansville will not see any additional revenues from Gibson Water until after the True-Up Date described in the Agreement.¹² While we find Mr. Baldessari’s approach of including a true-up mechanism at Phase V to account for any additional revenues that have, or have not, materialized to be reasonable, we believe the true-up to be performed pursuant to the Agreement can be used to true-up rates for revenues to be received after Evansville is no longer contractually obligated to offset the project with revenues received by Gibson Water. Thus, we find, once such true-up report is generated, Evansville shall file with the Commission such report with its subsequent phase of rates approved herein, along with a new tariff and supporting workpaper, which will adjust Evansville’s rates to reflect Gibson Water’s actual average usage over the three-year true-up period under the Agreement.

b. Other Revenues Issues. On rebuttal, Mr. Baldessari testified Petitioner accepts the \$227,772 sales tax adjustment to base period revenues proposed by Ms. Stull. He further testified Petitioner also accepts the corresponding COVID-19 adjustment and Phase II and Phase III adjustments resulting from the additional revenues from the sales tax being added back to the base period. Mr. Baldessari also testified Petitioner is willing to accept Ms. Stull’s customer growth normalization calculation for the residential and public authority classes using the correct Phase III tariff rates from Cause No. 45073. He testified Petitioner accepts the OUCC’s calculation for the revenue growth calculation for the commercial class but believes \$25,741 of additional revenues should be deducted for the additional commercial revenues already

¹² The True-Up Date is three years after Gibson Water makes its required capital contribution toward the Gibson Water projects.

being calculated by Petitioner in its Adjustment 7. Finally, Mr. Baldessari testified he agreed with Ms. Stull that the \$2,361 base period split connection fees should have been classified as other operating revenues, not as fire protection revenues.

We find the parties' agreement on the other revenue issues to be reasonable. However, we disagree with Mr. Baldessari that \$25,741 of additional revenues should be deducted from the OUCC's proposed commercial normalization adjustment for additional commercial revenues already calculated in Petitioner's Adjustment 7. Evansville proposed a \$43,698 increase to commercial revenues to reflect a general test year normalization.¹³ Evansville also proposed a "specific" test year commercial and industrial growth adjustment of \$25,741.¹⁴ Therefore, the total commercial normalization adjustment proposed by Evansville is \$69,439, which is the amount reflected in OUCC Exhibit 1, Table MAS-9, which compares the parties' operating revenue adjustments. Table MAS-9 also shows the OUCC proposed a commercial normalization adjustment of \$75,152, an increase of \$5,713 over the total adjustment proposed by Evansville. Further, Table MAS-11 of OUCC Exhibit 1 shows Ms. Stull's calculation of the OUCC's commercial customer growth adjustment, which reflects only a general growth adjustment. Thus, Ms. Stull did not accept Evansville's specific growth adjustment and, therefore, there is no need to adjust the OUCC's commercial revenue further. We accept the OUCC's increase to commercial operating revenues of \$75,152.

c. Conclusion. Based on the evidence presented as discussed above, we find Evansville's pro forma present rate revenue subject to increase to be \$44,522,227. We also note that Ms. Stull made a reclassification adjustment to remove \$10,992 from other operating revenues to other income, a "below-the-line" account. OUCC Ex. 1, Workpaper MAS-1, p. 1. However, she provided no explanation as to why this adjustment was needed and Petitioner did not address this adjustment in rebuttal. Therefore, we reject Ms. Stull's adjustment due to lack of support.

2. Expenditure Adjustments. Petitioner proposed pro forma net operating expenses incorporating 14 adjustments to various operating expenses in 2022, including, salaries and wages, employee benefits, contractual services, periodic maintenance, non-recurring items, additional sewer expenses and inflation adjustments. Petitioner also proposed additional operating expense adjustments in 2023 to add seven new employees and an additional inflation adjustment. The OUCC accepted several of Petitioner's proposed adjustments and proposed additional adjustments. The OUCC ultimately recommended pro forma net operating expenses of \$17,236,898, which is \$374,424 less than that proposed by Evansville in rebuttal. In rebuttal, Mr. Baldessari accepts the OUCC's adjustment to remove the traveling screens and maintenance related to SCADA from periodic maintenance expense. Mr. Baldessari also agrees with all of Ms. Stull's base period periodic maintenance expenditures and that the \$82,631 of periodic maintenances for pump maintenance should remain in the base period expenses. Mr. Baldessari accepted Mr. Malan's adjustments for employee salaries related five positions.

¹³ Petitioner's Exhibit 2, Adjustment (3), Attachment DLB-1, page 24.

¹⁴ Petitioner's Exhibit 2, Adjustment (7), Attachment DLB-1, page 28.

Based on the evidence presented, we find the expense adjustments agreed upon by the parties to be reasonable and address the parties' disputed adjustments below.

a. Periodic Maintenance. In its case-in-chief, Petitioner proposed pro forma periodic maintenance expense of \$1,352,602, which includes adjustments for dredging, tanks, booster stations, traveling screens, leak detection, and SCADA. Ms. Stull did not accept Petitioner's proposed periodic maintenance expense and instead recommended pro forma period maintenance expense of \$884,537. Ms. Stull recommended adjustments to the same maintenance expenses included in Evansville's case-in chief. On rebuttal, Mr. Baldessari did not accept the adjustments related to leak detection, dredging, tank maintenance, and booster stations.

With respect to leak detection, Evansville proposed \$282,334 of annual leak detection costs. Ms. Stull testified Petitioner spent on average \$100,787 per year during the 2017–2020 period and therefore recommended pro forma leak detection periodic maintenance expense of \$100,087. On rebuttal, Mr. Baldessari disagreed with Ms. Stull's recommendation because Evansville has a contract for leak detection totaling \$763,029 to be spent over a three-year period and, thus, will spend \$254,343 per year, on average, over the next three years. Therefore, Mr. Baldessari testified \$254,343 should be included in expenses.

While we agree with Mr. Baldessari, we encourage Evansville to include relevant contracts in its case-in-chief. Without the contract for leak detection, Ms. Stull focused her analysis on historical expenditures over the last four years. Although Ms. Stull's analysis would be appropriate without a contract, Evansville has an actual contract in place for \$763,029 in leak detection services to be performed over the next three years. Thus, we find this is the amount of actual expenses to be incurred and the \$254,343 annual leak detection expense proposed by Petitioner is appropriate and should be approved.

Regarding dredging, Evansville proposed \$328,475 for annual costs related to dredging of the intake structure. Ms. Stull recommended pro forma dredging costs of \$215,440 based on a quote Evansville received for such services. On rebuttal, Mr. Baldessari disagreed with Ms. Stull's recommendation because the amount included is for the 2021 contract with the contractor. Mr. Baldessari testified the actual amounts to be incurred based on information from the contractor are: \$215,440 for 2021, \$218,276 for 2022, and \$221,116 for 2023 and in each year an additional \$5,000 for Morley and Associates for pre- and post-dredging survey. He testified the resulting amount is \$226,116 and this amount should be included in pro forma expenses.

Again, while we agree with Mr. Baldessari, Evansville is encouraged to provide relevant contracts with its case-in-chief. In addition, if a contract is signed after its case-in-chief is filed, Evansville is encouraged to provide the contract as a supplement to its case. We find the contracted amount of \$226,116 is the appropriate amount of pro forma dredging expense that should be included, and this amount is approved.

Regarding tank maintenance, Evansville proposed \$537,923 of annual tank maintenance costs. The OUCC recommended annual tank maintenance costs of \$519,923, a difference of \$18,000, based on Ms. Stull's review of the tank maintenance contract and statements of work. On rebuttal, Mr. Baldessari disagreed with the OUCC's recommendation because Petitioner included

a tank maintenance contract in its case-in-chief that includes a yearly amount of \$528,570 for the nine tanks included in the contract plus \$9,353 for the campground tank. During cross examination at the hearing, Mr. Baldessari stated his numbers came from the tank maintenance contracts but could not identify where the numbers were found in the contracts. Tr. p. B-7 through B-9.

As an initial matter, we note that Petitioner did not include a tank maintenance contract with its case-in-chief. Instead, Ms. Stull provided a copy of the contracts she received in response to an OUCC data request to Petitioner in Attachment MAS-9 to OUCC Exhibit 1. The contracts and statements of work provided by Evansville and included in Ms. Stull's testimony indicate the annual tank maintenance cost should be \$519,923 for the nine tanks and the campground tank. Therefore, based upon Petitioner's contract showing annual tank maintenance expense of \$519,923, we find this is the amount of tank maintenance expense that should be approved.

With respect to booster stations, Ms. Stull testified she agreed with Petitioner's proposed booster station pump maintenance expense of \$41,274. However, she recommended the requested funds be placed into a restricted account to ensure the funds will be available when needed and used for the intended purpose. On rebuttal, Mr. Baldessari disagreed with the OUCC's recommendation because Petitioner already has a fund for periodic maintenance and does not believe it is necessary to set up additional funds to track individual periodic maintenance components separately.

We agree with Petitioner. There is no evidence in the record suggesting Evansville will spend the funds in a way other than for the intended purpose of conducting annual booster pump maintenance. Thus, we find it unnecessary to impose an additional administrative burden on Petitioner by forcing them to track this expense separately when they are already in a dedicated maintenance account. Thus, we reject the OUCC's recommendation.

Based on these adjustments, we find the resulting pro forma amount of periodic maintenance expense is \$1,049,469. We find this is the appropriate amount of pro forma periodic maintenance expense that should be included and, it is approved.

b. Forward Looking Test Year Employees. Petitioner proposed to add expense for seven additional employees in 2023 and 2024. These new positions include an Accounting Clerk, Night Shift Supervisor Water Construction, Safety Professional, Junior Surveyor, Operations and Maintenance Engineer, Administrative Assistant, Certified Master Electrician, Software Engineer and Control Systems Analyst.¹⁵ The OUCC accepted Petitioner's proposed \$156,669 pro forma expense for the Safety Professional and Administrative Assistant positions and recommended an increase in future test-year expense for the Accounting Clerk and Night Shift Supervisor positions of \$164,468. However, the OUCC rejected Petitioner's proposed expense for the additional employees.

The OUCC proposed to eliminate the Operations and Maintenance Engineer because the exact date of hire is unknown and Petitioner's discovery response implies the work for this position

¹⁵ Petitioner proposes to hire two positions, a Safety Professional and an Administrative Assistant, before the beginning of the forward-looking test period.

is being performed through contractual services if it is being performed. The OUCC also proposed to split the costs associated with the Night Shift Supervisor equally with the wastewater department instead of allocating the costs 100% to the water utility based on Petitioner's discovery response to OUCC Data Request 14-12, which provides the position "will reduce the need for on-call supervisors from other utility departments who are unfamiliar with the everyday operations of the water, sewer, and meter departments while reducing excessive overtime by unsupervised hourly employees." OUCC Ex. 2, Attachment TWM-5.

On rebuttal, Mr. Baldessari testified Petitioner is willing to accept the OUCC's recommendation to not include the Junior Surveyor, Certified Master Electrician, Software Engineer, Control System Analyst positions in the forward-looking Test Year expenses.¹⁶ With respect to the Night Shift Supervisor, Mr. Baldessari disagreed with Mr. Malan's recommendation to split the salary equally between the water and sewer departments because the Night Shift Supervisor will perform water-only on call duties. Mr. Baldessari also disagreed with excluding the Operations and Maintenance Engineer position. He testified Mr. Malan incorrectly assumes this work is being performed through outside contractual services but Petitioner does not currently have personnel inside or outside of the utility performing this role.

Based on the evidence presented, we find the OUCC's allocation of the Night Shift Supervisor's costs between the water and wastewater departments reasonable and supported by the evidence. Because the entire expense for the Night Shift Supervisor is included in Petitioner's proposed salaries and wages, benefits, and payroll taxes, we find a 50% reimbursement of the Night Shift Supervisor expense must be recognized in the adjustment to sewer reimbursement shared costs. Further, we find no evidence was presented to show the Operations and Maintenance Engineer position is being performed by an outside contractor, and thus, we find this position should be approved.

c. Non-Allowed Expenses. Petitioner included a \$26,594 cost associated with fraud loss expense in its case-in-chief. Ms. Stull recommended eliminating this expense because this type of cost is not recoverable for ratemaking purposes. On rebuttal, Mr. Baldessari disagreed with Ms. Stull's adjustment because Petitioner incurred fees in the base period associated with legal expenses resulting from a cybersecurity issue. Mr. Baldessari testified it is not uncommon for utilities the size of Evansville to face cybersecurity threats. He stated he expects the Commission would want to encourage utilities to deal with cybersecurity threats and would recognize the costs of doing so are legitimate.

On cross examination, Mr. Baldessari clarified the \$26,594 expense was for legal fees associated with the fraud event, and not the actual fraud loss itself. Tr. p. B-11. Further, in response to the Commission's Docket Entry dated October 22, 2021, Petitioner responded that while it did have protocols in place to deal with cybersecurity threats at the time the loss was incurred, it did not have an official cybersecurity policy in place. Petitioner further responded it was in the process of developing such policy. So, while we agree with Mr. Baldessari that expenses incurred as a result of cybersecurity threats are legitimate, we believe Petitioner should adopt a formal policy to

¹⁶ Mr. Baldessari also testified Petitioner agreed to exclude the Regulatory Compliance Specialist, but Petitioner did not propose to add such a position in its case-in-chief.

help mitigate these losses in the future. Accordingly, we find the \$26,594 is a legitimate expense that should be allowed; however, we encourage Petitioner to work expeditiously to prepare a formal cybersecurity policy to help mitigate against future threats.

d. Wastewater Department Reimbursement. Given our acceptance of certain adjustments from both Petitioner and the OUCC relating to Petitioner’s proposed new hires, we find an adjustment is necessary to Petitioner’s rebuttal pro forma amounts for the Phase II wastewater portion of general expenses. Petitioner accepted all the OUCC’s adjustments that would have had an impact to pro forma wastewater expense reimbursements that would occur in Phase I. However, we agree with the OUCC that the costs associated with Petitioner’s new Night Shift Supervisor should be shared equally between the water and wastewater departments. Therefore, the reimbursement of these costs needs to be added to Petitioner’s rebuttal recommendation for wastewater reimbursement for Phase II.

| Wastewater Department Reimbursement | Phase I | Phase II |
|--------------------------------------------------------|---------------|---------------|
| Petitioner Pro-forma Rebuttal Wastewater Reimbursement | \$ 13,480,710 | \$ 13,923,368 |
| Add: 50% Reimbursement for Night Shift Supervisor | - | 46,296 |
| <i>Total</i> | \$ 13,480,710 | \$ 13,969,664 |

We believe Petitioner’s Phase I pro forma reimbursement of \$13,480,710 for the wastewater portion of expenses and \$13,696,664 for Phase II reimbursement is reasonable and approved. However, we agree with the OUCC that Evansville did not adequately support the amount of wastewater reimbursement that was due to base period adjustments and the amount due to the inflation adjustments.

e. PILT. Petitioner proposed an annual revenue requirement for PILT for each of the five proposed increases as follows: Phase I - \$3,590,000; Phase II - \$4,105,000; Phase III - \$4,445,000; Phase IV - \$4,785,000; and Phase V \$5,330,000. OUCC Witness Malan testified that while he agreed with the tax rate Petitioner used to calculate PILT and accepted the 25% factor used to exclude the value of the plant outside the municipal limits, he calculated a different PILT expense for each year due to the recommendations made by other OUCC witnesses, which were presented in Table 2 of OUCC Exhibit 2.

On rebuttal, Mr. Baldessari testified Mr. Malan’s proposed calculations are understated and should be rejected. He testified Mr. Malan’s proposed calculation included only about \$18,683,800 per year for added capital improvements and, thus, only a small portion of the proposed bond funded projects were included in his PILT calculations. Mr. Baldessari testified Evansville’s PILT calculations assumes a portion of the proposed bond funded projects are included in the calculation and are reduced each year to better phase in the rate increase.

The level of PILT varies between the parties due to the different starting points used and the amount of funding proposed for Petitioner’s capital improvement projects. Petitioner’s starting point was based on capital assets in service and construction work in progress (“CWIP”) as of September 30, 2020. Petitioner also added \$83,293,652 related to the “balance of project proceeds” as of September 30, 2020. The OUCC based its starting point on utility plant in service and CWIP

as of December 31, 2020. The OUCC also added \$102,340,066 (2021 - \$51,596,469, 2022 - \$38,853,229, and 2023 - \$11,890,368) for construction projects related to the Cause No. 45073 case.¹⁷ Both parties computed PILT based on a projected estimated net assessed value for each proposed phase, reduced by a factor of 25% to account for utility plant located outside Evansville's corporate boundaries. That amount was then multiplied for each phase by the city of Evansville's corporate tax rate of 1.7005% to produce their respective calculated PILT. However, Mr. Baldessari explained that Petitioner reduced its calculated PILT "in each phase to phase in the rates and charges." Pet. Ex. 3, p. 39.

Neither party challenged the accuracy of the others first year calculation. We also agree with the corporate tax rate and the 25% reduction to utility plant used by the parties to account for plant located outside Evansville's corporate boundaries. Based on Petitioner's response to the Commission's October 22, 2021 Docket Entry, for each phase of rate increases, Petitioner deducted from its proposed capital improvements, the amount to be funded by debt. The remaining amount was then allocated between the year the improvement was placed in service and the subsequent year 26%/74%, respectively. Petitioner then added debt funded projects associated with Road Relocates and "CES/RPR" Engineering costs, which were reflected on the previous year's capital improvements. No other debt funded projects were included in Petitioner's net assessments. Thus, we find Petitioner's PILT calculations are reasonable and based on the amount of proposed CIP reflected on Petitioner's Exhibit 2, Attachment DLB-1, pp. 7-9.¹⁸ Therefore, we find Petitioner's proposed PILT calculations to be reasonable and should be included in the annual revenue requirement. However, we note that the level of detail provided in Petitioner's Docket Entry response should have been provided with Petitioner's case-in-chief. Petitioner is reminded that providing sufficient supporting documentation with its case-in-chief saves considerable time and costs to all parties involved.

f. Debt Service. Petitioner's total debt service consists of the debt service from the existing bonds, which was not disputed, and the debt service from the proposed open market bond and SRF bond. The only issues separating the parties on debt service are the amount of the bonds since Evansville agreed to the OUCC's proposed interest rate. As discussed above, we approve Petitioner's issuance of an open market bond in the amount of \$53,447,000 and an SRF bond in the amount of \$171,615,000. Using the debt service from the current bonds and the debt service on the proposed bonds, we find Petitioner's debt service requirements are \$17,527,945 for Phase I, \$17,529,307 for Phase II, \$19,672,858 for Phase III, \$22,539,871 for Phase IV and \$23,262,494 for Phase V.¹⁹ Based on the true-up reports these may be adjusted beginning with Phase III, April 1, 2024.

¹⁷ Based on OUCC Exhibit 3, page 9, which reflects a balance of \$102,340,066 for current (\$83,293,652) and noncurrent (\$19,046,414) restricted construction funds as of September 30, 2020.

¹⁸ We note Petitioner excluded the cost of the proposed WTP from its PILT calculation.

¹⁹ Both Petitioner and the OUCC used the year ending January 1, 2027 for the Phase V existing debt service but used the year ending January 1, 2028 for the new debt service. For consistency, the Commission used the year ending January 1, 2028 for the Phase V existing debt service and new debt service, which results in a de minimus difference of approximately \$3,000.

Under Ind. Code § 8-1.5-2-19(b), when a municipality issues debt, it must show the 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, together with a surplus or margin of at least 10% in excess. Based on the schedule in Paragraph 7.B.4. below, the Commission finds Evansville will meet the standard under Ind. Code § 8-1.5-2-19(b) and, therefore, certifies that Petitioner's authorized rates and charges provide sufficient funds for the utility's operation, maintenance, and depreciation, and to pay the principal and interest of the proposed bond issue, together with a surplus or margin of at least 10% in excess.

g. Debt Service Reserve. For debt service reserve, Mr. Baldessari used the total debt service on the proposed bonds for the year ending January 1, 2035 and amortized that amount over five years. For Phase I, he used six months of transfers of the open market bond and three months of transfers for the SRF bond. OUCC witness Dellinger's recommended debt service reserve was based on an Excel payment function using level annual payments. Based on the evidence presented, we find Petitioner's methodology is reasonable and should be approved because it reflects actual amortization schedules rather than an Excel function. Therefore, using the debt service approved above, we find the debt service reserve for Phase I is \$358,647 and for Phases II–V is \$1,146,710.

h. E&R. In its case-in-chief, Evansville proposed E&R capital projects totaling \$49,027,864 to be phased-in at different amounts over the five-year period of the proposed rate increase. Ms. Stull testified the OUCC accepts the total proposed E&R capital projects but recommended the annual E&R revenue requirement be based on a five-year average. She recommended an E&R revenue requirement of \$9,805,573 (\$49,027,864/five years). On rebuttal, Mr. Baldessari disagreed with Ms. Stull's adjustment, asserting that if the first step of the increase is to be deferred for one year as proposed by the OUCC, then the total E&R will need to be recovered over the remaining four steps. He stated that the entire \$49,027,864, net of the amounts that would be funded through existing rates until the Test Year, would need to be divided over four years, producing an annual E&R requirement of \$10,580,961.

We agree that Mr. Baldessari's calculation of Ms. Stull's proposed E&R revenue requirement, as opposed to calculating it based off a five-year average as the OUCC proposes, is the appropriate approach. We find this approach better aligns Petitioner's revenues and expenses and provides a more manageable increase year-to-year for Evansville's customers. However, the E&R amount to be approved ultimately depends on the structure of Petitioner's rate increase. As discussed below, because we find Petitioner's rate implementation structure as proposed in its case-in-chief is appropriate, we also find the E&R revenue requirement as originally proposed in Petitioner's case-in-chief is appropriate and should be approved.

3. Rate Implementation. Before we address Petitioner's base rate relief, we must first address the proposed rate implementation structure. In this Cause, Petitioner has chosen to use a forward-looking test year for the 12-month period beginning April 1, 2023, which is not more 24 months after Evansville filed its Petition. Petitioner has built its future Test Year from projected data, with the projection beginning at the close of the historic base period (12 months ended September 30, 2020) through the beginning of the Test Year (the "link period") and then on throughout the Test Year. Consequently, the projection period begins at the conclusion of

the historic base period and continues up to and through the Test Year (a period of three and a half years).

Petitioner is proposing to phase-in the rate increase over five phases (or years), with the first phase of the rate increase starting upon the later of the issuance of an order or April 1, 2022, which date will be prior to the start of the Test Year. This first phase would include the effects of the projection through April 1, 2022. The second phase would take effect on April 1, 2023, the beginning of the forward-looking test period, and would fully reflect the Test Year results of operation. Phase III would take effect at the close of the test period, April 1, 2024, and would adjust for part of the debt service associated with the debt issuance approved in this Cause as well as additional PILT and E&R. The fourth and fifth phases would take effect one and two years thereafter respectively and Phase V would reflect the full phase in of the debt service, PILT, and E&R.

Mr. Baldessari testified Evansville is not requesting authority to recover any costs before they are projected to be incurred—that the first phased increase reflects only the effects of the projected data through April 1, 2022. Petitioner contends that if the Commission approves Evansville’s Test Year projection for purposes of setting rates, we will have necessarily approved the portion of Petitioner’s projection as of April 1, 2022. In addition, if Petitioner’s current rates are insufficient to recover the revenue requirement for the period of the projection as of April 1, 2022, then its current rates and charges do not meet the statutory definition of reasonable and just as set forth in Ind. Code § 8-1.5-3-8(c) and hence, those rates are unlawful. *See* Ind. Code § 8-1.5-3-8(d).

The OUCC disagreed with Petitioner’s interpretation of Ind. Code §§ 8-1-2-42.7 and 8-1.5-3-8. It argues that while Ind. Code § 8-1-2-42.7 allows for temporary rates, it does not authorize rates to go into effect prior to the Test Year. The OUCC argues that Ind. Code § 8-1-2-42.7 authorizes one rate increase based on a single test period, not multiple rate increases, by asking for an interim increase in advance of the Test Year. The OUCC also recommended Petitioner’s rate increase be implemented in two phases instead of five phases.

On rebuttal, Mr. Baldessari testified Petitioner is not seeking to implement temporary or interim rates but is instead proposing to implement a Phase I increase on April 1, 2022 (or upon issuance of the Order, whichever occurs later), at which time its rates and charges will be insufficient to recover all the statutorily required elements for reasonable and just rates. He reiterated nothing in Section 42.7 prohibits a rate increase during the link period and if the legislature had intended no increases during this period of the two-year projection, they would have said so specifically. However, he indicated Evansville is willing to defer the first increase until Phase II if that is the Commission’s preference. Mr. Baldessari also disagreed with the OUCC’s proposed two-phase rate increase because Petitioner proposed the five-phase rate increase to gradually implement the rate increase through annual increases to ease the financial burden on ratepayers.

Ind. Code § 8-1.5-3-8(f) requires the Commission approve a municipal utility’s rates and charges in accordance with the procedures set forth in Ind. Code ch. 8-1-2. In accordance with Ind. Code § 8-1-2-42.7(d), a municipal utility may designate the test period for the Commission to use

in evaluating a utility's rates and charges. In this instance, Evansville chose the forward-looking test period of April 1, 2023 to March 31, 2024. The purpose of designating the test period is to establish a 12-month period of data from which appropriate adjustments can be made to determine a utility's rates and charges on a going forward basis. This is true irrespective of whether a historical, hybrid, or future test period is used. It is only the way in which the data gets adjusted that slightly differs depending on the chosen test period.²⁰ However, the goal is still the same—to determine and establish rates and charges that reasonably represent the cost of providing the utility service over the period of time that the rates and charges are expected to be assessed.

As expressed by Indiana courts, “the goal in statutory interpretation is to determine, give effect to, and implement the intent of the legislature as expressed in the plain language of the statutes.” *Clark Co. Drainage Bd. v. Isgregg*, 966 N.E.2d 678, 680 (Ind. Ct. App. 2012). Consequently, if a statute is clear and unambiguous on its face, no room exists for judicial construction; however, if a statute contains ambiguity that allows for more than one interpretation, it opens itself up to judicial construction to effect the legislative intent. *Siwinski v. Town of Ogden Dunes*, 949 N.E.2d 825, 828 (Ind. 2011). When interpreting a statute, “we are mindful of both what it does say and what it does not say.” *ESPN, Inc. v. Univ. of Notre Dame Police Dep't*, 62 N.E.3d 1192, 1195-96 (Ind. 2016).

Based on a plain reading of the statutes, nothing in either Ind. Code § 8-1.5-3-8 or Ind. Code § 8-1-2-42.7 prohibits a rate increase from taking effect before the beginning of the Test Year. Nor is there any language in either statute that requires the rate increase to take effect only on or after the chosen test period. Section 42.7(e) does prohibit “temporary” rates from going into effect before the projected period; however, the allowance for temporary rates under the statute is a statutory relief mechanism a utility may request if the Commission fails to act on the rate request within 300 days. While the OUCC attempts to equate Petitioner's request to a request for temporary rates, Petitioner's request does not meet the requirements for temporary rates and Petitioner made it clear on rebuttal this is not what it is seeking. Rather, Petitioner seeks to begin implementing the portion of its rate increase it has projected will be incurred during the year immediately prior to the Test Year.

In enacting Ind. Code § 8-1-2-42.7, the Legislature specifically allowed for use of a test period commencing two years beyond the filing of the petition thereby tacitly approving Petitioner's ability to build its rate request based upon three years of projected data, the two years after the filing of the petition and the 12-month test period. We agree with Petitioner that if the Legislature had intended no rate increases to occur prior to the Test Year, it would have said so specifically.

In addition, contrary to the OUCC's assertions, Evansville is not seeking two rate increases based on two forward looking test periods or attempting to evade the 15-month rule in Ind. Code § 8-1-2-42(a). Evansville has chosen a single forward looking test period (i.e., April 1, 2023–March 31, 2024). It is from the data developed for that Test Year that the Commission is able to determine what are just and reasonable rates and charges for the utility during the requested Phase

²⁰ For example, a historical test period uses historical data and makes adjustments to that data based on fixed, known, and measurable changes that have since occurred; whereas a future test period uses historical data to project what changes are reasonably expected to occur at some point in the future.

I. Petitioner is not using two different test periods. Further, Section 42(a) does not prohibit a utility from implementing rate increases more frequently than 15 months. Instead, Section 42(a) prohibits a utility from filing a request for a general rate increase within 15 months of its last filing for such a rate increase, with several exceptions. Notably, one of those exceptions is when the increase is based on a rate structure previously approved by the Commission. We further note that approving Petitioner's request to phase in its rate increase is not that different from other rate increases the Commission has authorized to be phased in based on when capital improvements are placed into service. *See e.g., Duke Energy Ind., LLC*, Cause No. 45253 at pp. 149-151 (IURC June 29, 2020) (The utility's base rates were established upon the rate base at the end of the test period and a rate adjustment was applied at the time Step 1 rates went into effect so as to reflect the rate base at that particular point in time. Step 1 rates, which went into effect prior to the end of the test period, were to serve as a bridge to the designed base rates until the time and conditions establishing the base rates became effective). Or, as noted by OUCC Witness Stull, when rate increases are phased in after the Test Year to coincide with approved debt issuances, such as in this case with respect to Phases III–V and as was approved in Evansville's prior rate case, Cause No. 45073.

Moreover, as noted by Petitioner, Ind. Code § 8-1.5-3-8 specifically prohibits a municipality's rates from being unreasonable and unjust. For purposes of the statute, unreasonable and unjust rates are rates that fail to produce sufficient revenues to recover the statutorily enumerated elements. Accordingly, if a utility presents a rate case based upon a forward looking test period commencing 24 months after the filing of the petition and sufficiently demonstrates through its projected data that the utility will be unable to recover its lawful revenue requirement before the commencement of the test period, then we find it appropriate to authorize the utility's rates be increased to produce sufficient revenues.

We also reject the OUCC's recommendation to phase-in the rate increase over two phases instead of five as originally proposed by Petitioner. Both the OUCC and customers raised concern regarding the affordability of Evansville's rates. We understand and appreciate these concerns, but Evansville's WTP is over 100 years old and needs to be replaced. Accordingly, we find Evansville's proposed phase-in structure is supported by the evidence and accomplishes the goal of building the new WTP while also minimizing the rate impact on customers to the greatest extent possible through timely, gradual increases. We find Evansville's proposal to phase-in the rate increase over five-phases is appropriate and should be approved.

4. Base Rate Relief. Based on the evidence presented and our findings herein, we find that Petitioner's revenue requirements are as follows:

| | Phase I | Phase II | Phase III | Phase IV | Phase V |
|-----------------------------------------------------|---------------|---------------|---------------|---------------|---------------|
| Operating Expenses | \$ 30,153,643 | \$ 30,825,388 | \$ 30,861,573 | \$ 30,902,474 | \$ 30,940,871 |
| Sewer Portion of General Expenses | (13,480,710) | (13,969,664) | (13,969,664) | (13,969,664) | (13,969,664) |
| Extensions and Replacements | 9,300,000 | 9,650,000 | 10,050,000 | 9,550,000 | 10,477,900 |
| Debt Service | | | | | |
| Existing Debt | 17,527,945 | 17,529,307 | 17,527,670 | 17,528,796 | 17,531,770 |
| New Debt | - | - | 2,145,188 | 5,011,075 | 5,730,725 |
| Debt Service Reserve | 358,647 | 1,146,710 | 1,146,710 | 1,146,710 | 1,146,710 |
| Payment in Lieu of Taxes | 3,590,000 | 4,105,000 | 4,445,000 | 4,785,000 | 5,330,000 |
| Total Revenue Requirements | 47,449,526 | 49,286,741 | 52,206,477 | 54,954,391 | 57,188,311 |
| Less Revenue Requirement Offsets: | | | | | |
| Interest Income | 22,218 | 22,217 | 22,217 | 22,217 | 22,217 |
| Other Operating Revenues | 212,504 | 212,504 | 212,504 | 212,504 | 212,504 |
| Other Non-Operating Income | 482,627 | 491,144 | 491,144 | 491,144 | 491,144 |
| Net Revenue Requirements | 46,732,177 | 48,560,876 | 51,480,612 | 54,228,526 | 56,462,446 |
| Less: Revenues at Current Rates Subject to Increase | 44,522,227 | 46,009,864 | 48,597,060 | 51,521,513 | 54,266,923 |
| Net Revenue Increase Required | 2,209,950 | 2,551,012 | 2,883,552 | 2,707,013 | 2,195,523 |
| Gross Revenue Conversion Factor | 101.418427% | 101.418427% | 101.418427% | 101.418427% | 101.418427% |
| Recommended Increase | \$ 2,241,296 | \$ 2,587,196 | \$ 2,924,453 | \$ 2,745,410 | \$ 2,226,665 |
| Recommended Percentage Increase | 5.03% | 5.62% | 6.02% | 5.33% | 4.10% |

Based on the evidence, the Commission finds Petitioner's current rates and charges are insufficient to satisfy Petitioner's annual pro forma net revenue requirements. As shown above, Petitioner's total annual present rate operating revenues for Phase I, Phase II, Phase III, Phase IV, and Phase V are \$44,522,227, \$46,009,864, \$48,597,060, \$51,521,513 and \$54,266,923, respectively. Accordingly, Petitioner's existing rates are insufficient to recover Petitioner's revenue requirement and should be increased to produce an additional \$2,241,296, \$2,587,196, \$2,924,453, \$2,745,410, and \$2,226,665 (each inclusive of the prior phase increase) in annual operating revenues for Phase I, Phase II, Phase III, Phase IV, and Phase V, respectively. We find the overall percentage rate increase over the five phases is 28.58%, an increase of \$12,725,021 over present rate operating revenues of \$44,522,227.

C. Debt-Service True-Up Report. Based on the evidence presented as discussed above, we find that Evansville should true up its rates to reflect the actual debt service after closing on its bonds. As recommended by OUCC Witness Dellinger, Petitioner shall file a report within 30 days of closing on each of its long-term debt issuances authorized herein, explaining the terms of the new loan, the amount of debt service reserve, and an itemized account of issuance costs, along with a revised tariff, amortization schedules, and rate impact. The OUCC shall have 14 days after service of the true-up report to challenge the proposed true-up, and Evansville shall have 14 days to respond to the OUCC's concerns. Further, we find that once Petitioner's debt service reserve has been fully funded, the revenue requirement associated with debt service reserve should be placed in a restricted account to be used to pre-fund future debt service reserves or future borrowings.

D. Capital Improvements and Status of Refresh Evansville. In Petitioner's last base rate case, Cause No. 45073, Evansville proposed a goal to replace 1.5%, or 15 miles, of water mains per year. Mr. Labitzke testified for years 2019–2021, Evansville completed 25.5 miles of replacements, but 44.2 miles of water line is planned to be constructed by 2022.

OUCW Witness Parks noted that in Cause No. 45073 the OUCW raised concern that Evansville's water main cost estimates were inflated and the replacement schedule was overly ambitious. Mr. Parks testified Evansville is behind on its water main replacement program approved in prior cases and recommended that a capital improvements reconciliation be submitted annually to the Commission. Specifically, he recommended Petitioner be required to report annually (i.e., through its IURC Annual Reports) the estimated cost of each capital improvement project, the actual costs incurred by calendar year for each project, the actual total cost of each project, the projected completion dates for unfinished projects, and the actual completion dates for each finished project. Mr. Parks also recommended Evansville track its water main replacements and advise the Commission of work completed annually in its Annual Report.

On rebuttal, Mr. Labitzke testified that Evansville is on pace to complete the water replacement program in 2022 and an annual reporting requirement is unnecessary because the intended installations will be encumbered within the intended three-year period. In addition, he testified that capital improvement projects can and will arise to take priority that had not been previously included in funding. He noted the only money that has not been encumbered from Cause No. 44760 is related to engineering for the water treatment plant proposed in this case and will be spent in connection therewith.

In an attempt to better understand the amount of bond proceeds yet to be spent, the Presiding Officers, in an October 6, 2021 Docket Entry, requested information about Petitioner's actual expenditures from its bond issues. However, Petitioner's response focused on the amount of project funds that had been encumbered, not actually spent. During cross examination by the OUCW, Mr. Labitzke acknowledged that as of September 30, 2021, there remains \$80 million in cash yet to be spent, but noted half of that is encumbered and projects are estimated to be completed in the second quarter of 2023. Tr., p. B-23.

In our Order in Cause No. 45073 (at p. 15), we shared the OUCW's concerns with Evansville's aggressive infrastructure replacement schedule based on its historical performance but ultimately authorized the requested funding. Based on the evidence presented here, Evansville has again failed to meet the pace of improvements and replacements indicated in Cause Nos. 44760 and 45073. Therefore, we find that the reporting requested by Mr. Parks should be required of Petitioner because it will assist in keeping us informed of Evansville's construction, extensions, and additions.

8. Other Matters. In Evansville's last base rate case (Cause No. 45073), the Commission agreed with the OUCW that Evansville failed to provide in its case-in-chief sufficient explanations for adjustments and supporting documentation for its requested relief. Although Evansville followed our directive and met with the Commission and the OUCW immediately prior to filing this case, we find Evansville's case-in-chief again failed to contain sufficient information in certain areas. Several of the observed deficiencies, such as the failure to provide the contracts supporting its expense adjustments, are noted herein. Moreover, we believe the extensive discovery in this case could have been minimized if Petitioner had provided the necessary information and supporting documentation relied upon in developing its case-in-chief with its filing in this Cause. In addition, in 2020, the Commission adopted General Administrative Order 2020-05, Improving Procedural Efficiencies, which set forth guidelines and recommendations for

rate case filings that Petitioner, for the most part, failed to follow. Therefore, within 30 days after issuance of this Order and all opportunities for further appeal have been exhausted, Petitioner shall contact the Commission's Water/Wastewater Division to schedule a meeting to discuss possible improvements to Petitioner's future filings in an effort to allow for more efficient processing of Petitioner's requested relief.

9. **Confidentiality.** On May 10, 2021, Evansville filed a Motion for Protection and Nondisclosure of Confidential and Proprietary Information ("Motion"), which was supported by the Affidavits of Michael Labitzke and Douglas L. Baldessari, showing that certain information to be submitted to the Commission contained trade secret information. In a June 8, 2021 Docket Entry, the Presiding Officers determined the information should be held confidential on a preliminary basis, after which the information was submitted under seal. After review of the information and consideration of the affidavits, we find the information is trade secret information as defined in Ind. Code § 24-2-3-2, is exempt from public access and disclosure pursuant to Ind. Code §§ 5-14-3-4 and 8-1-2-29, and shall be held as confidential and protected from public access and disclosure by the Commission.

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

1. Petitioner is authorized to increase its rates and charges for water service, across-the-board, in five Phases with the increase for Phase I constituting an 5.03% increase to increase annual operating revenues by \$2,241,296, for Phase II constituting a further 5.62% increase to increase additional annual operating revenues by \$2,587,196, for Phase III constituting a further 6.02% increase to increase additional annual operating revenues by \$2,924,453, for Phase IV constituting a further 5.33% increase to increase additional annual operating revenues by \$2,745,410 and for Phase V constituting a further 4.10% increase to increase additional annual operating revenues by \$2,226,665. Phase I shall take effect following approval, and Phases II, III, IV and V shall take effect April 1, 2023, 2024, 2025 and 2026, respectively.

2. Petitioner is granted a Certificate of Authority to issue additional long-term debt in one or more issues to the SRF or pursuant to competitive sale or private placement at or below competitive market rates and in principle amount not to exceed \$225,062,000 million as approved herein. This Order shall be the sole evidence of Petitioner's certificate. If Petitioner is not required to construct the residuals management facility, such financing authority shall be reduced by \$30,000,000.

3. Prior to implementing the approved rates and charges, Petitioner shall file new schedules of rates and charges under this Cause for approval by the Water/Wastewater Division. For Phase I, Petitioner's new schedules of rates and charges shall be effective upon issuance of this Order and after approval by the Water/Wastewater Division. The Phase II, Phase III, Phase IV, and Phase V schedules shall then take effect one to four years, respectively, after such approval.

4. Petitioner shall file its true-up reports for debt service as provided in Finding Paragraph 7.C.

5. Petitioner shall file its true-up report to account for Gibson Water revenues in accordance with Finding Paragraph 7.B.1.a.

6. Within 60 days of completion of the new water treatment plant, Petitioner shall file a report indicating the amount and use of any unspent project funds in accordance with Finding Paragraph 7.A.4.

7. In its Annual IURC Report, Petitioner shall provide a status report of each capital improvement project. The status report shall include the estimated cost of each such project, the actual costs incurred by calendar year for each project, the actual total cost of each project, the projected completion dates for unfinished projects, and the actual completion dates for each finished project. Evansville shall also track its water main replacements and provide a listing of the work completed.

8. Within 30 days after this Order has been issued and all opportunities for further appeal have been exhausted, Petitioner shall contact the Water/Wastewater Division to schedule a meeting in accordance with Finding Paragraph 8.

9. In accordance with Ind. Code § 8-1-2-70, Petitioner shall pay within 20 days from the date of this Order the following itemized charges, as well as any additional charges that were or may be incurred in connection with this Cause.

| | |
|---------------------------|------------------|
| IURC Charges: | \$ 18,376.90 |
| OUCG Charges: | \$ 26,634.71 |
| Legal Advertising Charges | <u>\$ 152.97</u> |
| Total: | \$ 45,164.58 |

Petitioner shall pay all charges into the Commission public utility fund account described in Ind. Code § 8-1-6-2, through the Secretary of the Commission.

10. In accordance with Ind. Code § 8-1-2-85, Petitioner shall pay a fee equal to \$0.25 for each \$100 of water utility revenue bonds issued, to the Secretary of the Commission, within 30 days of the receipt of the financing proceeds authorized herein.

11. The information filed in this Cause pursuant to Petitioner's motion for a protective order is deemed confidential pursuant to Ind. Code §§ 5-14-3-4 and 8-1-2-29, is exempt from public access and disclosure by Indiana law, and shall be held confidential and protected from public access and disclosure by the Commission.

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

HUSTON, FREEMAN, KREVDA, AND OBER CONCUR; ZIEGNER ABSENT:

APPROVED: MAR 02 2022

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

**Dana Kosco
Secretary of the Commission**