

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

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

**VERIFIED PETITION OF CITIZENS WASTEWATER)
 OF WESTFIELD, LLC FOR ALL NECESSARY)
 AUTHORITY IN CONNECTION WITH THE)
 EXTENSION FOR THREE (3) YEARS OF UP TO)
 \$5,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF)
 DEBT IN THE FORM OF A REVOLVING CREDIT)
 FACILITY)**

CAUSE NO. 45588

APPROVED: JAN 05 2022

ORDER OF THE COMMISSION

**Presiding Officers:
 David L. Ober, Commissioner
 Carol Sparks Drake, Senior Administrative Law Judge**

On July 29, 2021, Citizens Wastewater of Westfield, LLC (“Citizens Wastewater” or “Petitioner”) filed a Verified Petition with the Indiana Utility Regulatory Commission (“Commission”) requesting authorization to secure a \$5,000,000 line of credit in the form of a revolving credit facility for a term beginning in or before March 2022 and ending no more than three years thereafter (“Financing Period”).

On July 30, 2021, Petitioner prefiled the testimony and exhibits of Sara J. Mamuska-Morris, Petitioner’s Treasurer, and filed a motion for protection and nondisclosure of confidential and proprietary information. On September 23, 2021, a docket entry was issued in which Petitioner was advised that after reviewing Citizens Wastewater’s motion for confidential treatment, Petitioner had not shown the entire Credit and Continuing Covenant Agreement (“Agreement”) for which confidential treatment was requested is confidential. In lieu of denying confidentiality, Citizens Wastewater was afforded through October 1, 2021, to amend its motion. On October 1, 2021, Petitioner filed an amended motion for protection in which Petitioner sought confidential treatment for limited provisions in the Agreement. A docket entry was issued on October 4, 2021, in which confidential treatment of certain provisions of the Agreement was granted on a preliminary basis.

On October 7, 2021, the Indiana Office of Utility Consumer Counselor (“OUCC”) prefiled the testimony of Shawn Dellinger, Utility Analyst in the OUCC’s Water/Wastewater Division. On October 21, 2021, Petitioner prefiled Ms. Mamuska-Morris’ rebuttal testimony.

The Commission noticed this matter for an evidentiary hearing to be held on November 19, 2021, commencing at 9:30 a.m. in Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Petitioner and the OUCC, by counsel, appeared and participated in the hearing, and their testimony and exhibits were admitted without objection.

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

1. Notice and Jurisdiction. Notice of the hearing was published as required by law. Petitioner is a public utility as defined in Ind. Code § 8-1-2-1(a). Under Ind. Code §§ 8-1-2-76 through -81, the Commission has jurisdiction over a public utility's issuance of bonds, notes, or other evidence of indebtedness payable at periods of more than one year. Petitioner, in relevant part, requests authorization to secure a line of credit for a period of no more than three years; therefore, the Commission has jurisdiction over Petitioner and the subject matter of this proceeding.

2. Petitioner's Characteristics. Citizens Wastewater is an Indiana limited liability company with its principal office located at 2020 North Meridian Street, Indianapolis, Indiana. Petitioner owns, operates, manages, and controls plant, property, and equipment used to provide wastewater collection and treatment service to approximately 15,300 customers in and around the City of Westfield, Indiana.

3. Relief Requested. Petitioner requests authority to secure a line of credit up to an aggregate principal amount of \$5,000,000 in the form of a revolving credit facility with a third-party commercial banking entity for the duration of the Financing Period (together, the "Financing Plan").

4. Petitioner's Evidence. Sara J. Mamuska-Morris testified in support of Petitioner's Financing Plan. In her testimony, Ms. Mamuska-Morris: (1) described Petitioner's current capital structure, capitalization, and the net original cost of Petitioner's utility plant in service; (2) described the proposed revolving credit facility; (3) explained how Petitioner will use the revolving credit facility; and (4) explained why the proposed revolving credit facility is reasonable and in the public interest.

With regard to Petitioner's capital structure, Ms. Mamuska-Morris testified that as of June 30, 2021, 73.4% of Petitioner's capital consisted of common equity, and 26.6% was long-term debt. The current long-term debt, authorized on November 21, 2018, pursuant to the Commission's Order in Cause No. 45103, consists of \$22,660,000 in the form of Indiana Finance Authority Westfield Wastewater Utility Revenue Bonds Series 2019A ("Wastewater Utility Bonds") issued on February 13, 2019. Petitioner pays debt service equal to the interest on the borrowings and not any principal. Ms. Mamuska-Morris testified that when this debt matures on October 1, 2048, the entire amount borrowed will become due, and a new bond issue may be required. The interest rate on the Wastewater Utility Bonds is fixed at 5%.

Ms. Mamuska-Morris explained that the remainder of Petitioner's current outstanding debt consists of a revolving credit agreement among a syndicate of banks with PNC Bank as the administrative agent. There are no draws outstanding. The term of the current agreement is from March 14, 2019, to March 14, 2022, and the interest rate is available for periods of 1, 2, 3 or 6-month London Interbank Offered Rate ("LIBOR") plus a margin of 0.90%. In addition, there is a commitment fee of 0.10% and administrative agent and transaction fees. She testified that since Petitioner currently has no balances drawn on the revolving line of credit, once the line of credit is renewed (if the Commission approves this renewal) any new draws on the revolver will be booked as long-term debt until 12 months prior to the expiration date of the agreement, at which point they will be considered short-term debt, or until the balances are paid down. She testified

Petitioner's approximate net original cost of utility plant in service as of June 30, 2021, was \$113,945,809. Accordingly, the total outstanding capitalization of Petitioner under the Financing Plan will not be more than the fair value of Petitioner's property.

Ms. Mamuska-Morris described the terms of the proposed revolving credit facility. She noted its terms are expected to be substantially similar to the current agreement, a copy of which was filed with limited confidential redactions. Ms. Mamuska-Morris explained that the Commission approved authority for Petitioner's existing line of credit (also for a maximum amount of \$5,000,000) in Cause No. 45103.

Ms. Mamuska-Morris testified that due to the unavailability of a LIBOR benchmark rate after the end of December 2021, the Federal Reserve Board, the Office of the Comptroller of the Currency, and the FDIC have given banks and borrowers guidance to determine the best option for lending. She explained that, at this time, it is likely and expected another appropriate alternative reference rate will apply to the extended revolving credit facility through the end of its three-year term. Ms. Mamuska-Morris testified there are several options that include a risk-free rate such as the Secured Overnight Financing Rate (SOFR), a credit sensitive rate such as Bloomberg Short-Term Bank Yield Index (BSBY), or another commercially accepted alternative benchmark rate. She stated banks and borrowers will determine the appropriateness of the index based on funding cost and customer needs, and although it is anticipated the replacement benchmark may diverge from the existing LIBOR rate, there is sufficient market data to compare rates to ensure a comparable borrowing cost.

Ms. Mamuska-Morris identified collateral Petitioner will pledge to secure the amounts borrowed under the proposed extended revolving credit facility. She stated Petitioner has pledged its net revenues and accounts receivable. In addition, the revolving credit agreement will be subordinate to the existing revenue bonds. Ms. Mamuska-Morris noted Petitioner carries an AA-credit rating from Standard and Poor's.

Ms. Mamuska-Morris testified Petitioner plans to use the revolving credit facility for internal working capital purposes, including day-to-day operating needs and construction work-in-progress. She testified extension of the revolving credit facility will allow Petitioner to continue to ensure adequate liquidity and enable Citizens Wastewater to operate and expand its facilities and provide adequate, dependable, economic, and efficient service to the public.

Ms. Mamuska-Morris opined that the expected interest rate to be paid on the revolving credit facility, which will be variable, will be competitive with market rates for similar financing instruments, and this rate is expected to be reasonable for the intended purpose and in the public interest. The Verified Petition, Attachment SJM-1, indicated any initial interest rate will not exceed 8% at the time of commitment.

5. The OUCC's Evidence. Shawn Dellinger, Utility Analyst in the OUCC's Water/Wastewater Division, provided the OUCC's analysis of Petitioner's request. Mr. Dellinger recommended the Commission grant Petitioner authority to extend its existing \$5,000,000 revolving credit facility, set to expire on March 14, 2022, subject to certain reporting requirements and conditions. After evaluating whether Petitioner can afford to take on additional debt, Mr.

Dellinger concluded Petitioner's testimony shows Citizens Wastewater has the financial integrity to maintain the proposed revolving credit facility. Mr. Dellinger stated that because the exact terms of the proposed issuances will not be known until the debt is issued, the OUCC retains the right to challenge the prudence of any particular transaction. He recommended Petitioner provide notice to the Commission and the OUCC as soon as reasonably possible after securing the extension with the actual terms of the revolving credit facility.

6. Petitioner's Rebuttal. Ms. Mamuska-Morris testified in rebuttal that Petitioner objects to making the report the OUCC recommended upon extension of its revolving credit facility because such reporting is redundant and creates avoidable burdens for all parties involved. Ms. Mamuska-Morris stated the amount and terms of all debt issuance are delineated in Petitioner's annual report filed with the Commission in accordance with Ind. Code § 8-1-2-16. Specifically, in its annual report, Petitioner describes its outstanding debt obligation, including the nominal date of issue, date of maturity, and the order number granting the financing authority. In addition, Petitioner reports the interest rate, the frequency of payment, and the principal amount per its balance sheet. Ms. Mamuska-Morris recommended the Commission approve the proposed Financing Plan, as proposed by Petitioner, without compliance with Mr. Dellinger's proposed reporting obligations.

7. Discussion and Findings. Pursuant to Ind. Code §§ 8-1-2-76 through -81, the Commission has authority, after considering all information that may be relevant or required, to investigate and approve or disapprove a public utility's proposal to issue bonds, notes, or other evidence of indebtedness payable more than one year from their execution. The Commission must determine whether the proposed issue is in the public interest in accordance with the statutes addressing the issuance of securities by public utilities and must find the proposed issue is reasonably necessary in the operation and management of the utility's business so that the utility may provide adequate service and facilities.

Under Ind. Code § 8-1-2-78, a public utility may, with the Commission's approval, issue stock, certificates of stock, bonds, notes, or other evidence of indebtedness payable at periods of more than one year for: (1) the acquisition of property, material, or working capital; (2) the construction, completion, extension, or improvement of facilities, plant, or distributing system; (3) the improvement of its service; (4) the discharge or lawful refunding of its obligations; and (5) the reimbursement of its treasury as provided under Ind. Code § 8-1-2-78(e). Based on the evidence presented, Petitioner plans to use the revolving credit facility for internal working capital purposes, including day-to-day operating needs and construction work-in-progress. Ms. Mamuska-Morris testified that extension of the revolving credit facility will enable Citizens Wastewater to operate and expand its facilities and provide adequate, dependable, economic, and efficient service to the public. The Commission finds these purposes comply with the requirements of Ind. Code § 8-1-2-78. We also find Petitioner's Financing Plan is reasonably necessary in the operation and management of Petitioner's business; consequently, the Commission finds the proposed uses of these funds will serve the public interest.

Regarding the terms and conditions of the Financing Plan, Ms. Mamuska-Morris explained that the interest rate for the facility will be variable and competitive with market rates for similar financing instruments. She testified the interest rate is expected to be reasonable for the intended

purpose and in the public interest. The Verified Petition, Attachment SJM-1, indicated any initial interest rate will not exceed 8% at the time of commitment. The term will be for no more than three years. Based upon our review of the evidence, the Commission finds the terms and conditions of the Financing Plan are reasonable.

Pursuant to Ind. Code § 8-1-2-79, Petitioner properly filed its Verified Petition with the Commission and set forth the required description of the Financing Plan. Citizens Wastewater also provided evidence regarding the total outstanding capitalization of the utility in relation to its total value. The evidence shows Petitioner's net original cost of utility plant in service as of June 30, 2021, was \$113,945,809. Petitioner's current outstanding debt consists of Wastewater Utility Bonds issued on February 13, 2019, in the amount of \$22,660,000, with a maturity date of October 1, 2048, and a revolving credit agreement with no outstanding balance among a syndicate of banks with PNC Bank as the administrative agent. Under the Financing Plan, the total outstanding capitalization of Petitioner will not exceed the fair value of Petitioner's property. The Commission, therefore, finds the resulting capital structure is reasonable, and Petitioner's total outstanding capitalization does not exceed the total fair value of Petitioner's property.

Under Ind. Code § 8-1-2-80, the Commission has authority to impose such conditions upon the requested relief as the Commission deems reasonable. The OUCC proposed certain reporting requirements for Petitioner to provide and explain the actual terms of the revolving credit facility extension. Notwithstanding Petitioner's reluctance to provide this reporting because of its alleged redundancy with information Petitioner provides in its annual report, the Commission finds the requested report is reasonable to more timely provide the Commission and the OUCC with this information. Additionally, given the uncertainty related to the appropriate benchmark rate, we find it is reasonable to require the supplemental information the OUCC recommends. Accordingly, the Commission's approval of a revolving credit facility, as requested, is subject to Citizens Wastewater complying with the OUCC's proposed reporting requirement.

Based upon the Commission's consideration of the evidence, we authorize Petitioner's Financing Plan as described herein.

8. Confidential Information. In a docket entry issued on October 4, 2021, certain provisions of the Agreement ("Confidential Information") were preliminarily afforded confidential treatment as requested in Petitioner's amended motion for protection in accordance with Ind. Code §§ 8-1-2-29 and 5-14-3-4. Upon review of the Confidential Information, the Commission finds the material for which Petitioner sought confidential treatment in its amended motion contains confidential, proprietary, and/or sensitive information and should be protected from being ascertainable by the general public. Accordingly, the Confidential Information submitted to the Commission shall be exempt from the public access requirements of Ind. Code §§ 5-14-3-4 and 8-1-2-29 and shall continue to be held as confidential by the Commission.

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

1. Citizens Wastewater of Westfield, LLC is authorized to secure a line of credit up to an aggregate principal amount of \$5,000,000, consistent with the terms described above,

including entering into and executing appropriate transaction documents and evidence of indebtedness to effectuate the line of credit.

2. Within 21 days after securing the extension of its revolving credit facility, Petitioner shall file a report with the Commission under this Cause, serving a copy on the OUCC, in which Citizens Wastewater provides and explains the terms of the extension, including but not limited to, the principal amount, the date of issue, date of maturity, the interest rate, and the frequency of payment.

3. This Order is the sole evidence of the Commission's approval and shall constitute a certificate of authority granted to Petitioner as provided in Ind. Code § 8-1-2-80.

4. The information Citizens Wastewater filed in this Cause pursuant to Petitioner's amended motion for protection is deemed confidential under 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.

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

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

APPROVED: JAN 05 2022

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

_____ on behalf of
Dana Kosco
Secretary of the Commission