

**ORIGINAL**

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

**STATE OF INDIANA**

**INDIANA UTILITY REGULATORY COMMISSION**

**VERIFIED PETITION OF HANCOCK )  
RURAL TELEPHONE CORPORATION ) CAUSE NO. 45653  
D/B/A NINESTAR CONNECT FOR )  
AUTHORITY TO BORROW LONG TERM ) APPROVED: APR 06 2022  
DEBT TO THE EXTENT AUTHORITY IS )  
NECESSARY )**

**ORDER OF THE COMMISSION**

**Presiding Officers:**

**David E. Ziegner, Commissioner**

**Carol Sparks Drake, Senior Administrative Law Judge**

On December 14, 2021, Hancock Rural Telephone Corporation d/b/a NineStar Connect (“NineStar” or “Petitioner”) filed a Verified Petition (“Petition”)<sup>1</sup> with the Indiana Utility Regulatory Commission (“Commission”) asking the Commission to authorize NineStar to borrow long-term debt from the United States Department of Agriculture, Rural Development (“Rural Development”) to the extent such authorization is necessary. Petitioner also asked the Commission to recognize that it does not regulate NineStar for purposes of rates, charges, or long-term borrowing. Concurrent with filing the Petition, NineStar prefiled the testimony and attachments of April D. Fisher, NineStar’s Vice President; Earl L. Ridlen III, a Certified Public Accountant and Partner at LWG CPAs and Advisors; and Aaron L. Crow, an engineer with RQAW.

After an informal attorneys’ conference on January 19, 2022, during which the relief NineStar originally requested was discussed, on January 25, 2022, Petitioner filed an Amended Verified Petition (“Amended Petition”) limiting its request to Commission approval, to the extent necessary, for Petitioner to issue long-term debt. On January 25, 2022, Petitioner also prefiled amended testimony and attachments for Ms. Fisher and Mr. Ridlen.

On February 15, 2022, the Indiana Office of the Utility Consumer Counselor (“OUCC”) prefiled the direct testimony of Shawn Dellinger and Kristen Willoughby who are both Utility Analysts in the OUCC’s Water/Wastewater Division. On February 22, 2022, NineStar filed a notice confirming its intent to file no rebuttal testimony.

On March 1, 2022, a docket entry was issued requesting NineStar to explain certain adjustments, provide its debt service coverage, and confirm Rural Development’s minimum debt service coverage on the prospective loan. Petitioner provided responses to this docket entry on March 4, 2022. On March 7, 2022, an additional docket entry was issued seeking information

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<sup>1</sup> In this matter, instead of affirming the truth of the matters in the Petition, the signatory on the verification affirmed the truth of “the foregoing Pre-filed Direct Testimony.” When an Amended Verified Petition was subsequently filed, a verification was attached for “the foregoing Petition.” The better verification would have affirmed it was made for the foregoing Amended Petition to eliminate any question whether what the signatory affirmed as true was the Amended Petition or the Petition and have been dated per 170 IAC 1-1.1-8.

related to NineStar's prospective debt service and financial position. NineStar provided these responses on March 7, 2022.

The Commission held an evidentiary hearing in this Cause on March 8, 2022, commencing at 1:30 p.m. in Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Petitioner and the OUCC appeared, by counsel, and their respective evidence was admitted without objection.

The Commission, after considering the evidence and the applicable law, now finds:

**1. Notice and Jurisdiction.** Notice of the hearing in this Cause was given and published by the Commission as required by law. NineStar is subject to the jurisdiction of the Commission to the extent provided by Indiana law, including the Public Service Commission Act, as amended. NineStar is a public utility as defined by Ind. Code § 8-1-2-1 and a not-for-profit utility as defined in Ind. Code § 8-1-2-125. Petitioner seeks Commission authority, to the extent necessary, to issue long-term debt. Under Ind. Code § 8-1-2-78, the Commission has authority over a public utility's issuance of stock, bonds, notes, or other evidence of indebtedness payable at periods of more than 12 months.

**2. Petitioner's Characteristics.** Per the Amended Petition, NineStar is a tax exempt, nonprofit, cooperative organization owned and managed by its customers. NineStar provides various utility services within Hancock County, Indiana, including electric, telecommunication, broadband internet, water, and wastewater services. Petitioner, through its predecessor corporations, has provided various utility services within Hancock County since 1895. NineStar's primary office is currently located at 2243 East Main Street in Greenfield, Indiana.

**3. Relief Requested.** Petitioner requests the Commission's authorization, to the extent necessary, to borrow up to \$1,800,000 from Rural Development to make significant physical improvements to the wastewater collection and treatment facilities located within what previously was the Sugar Creek Utility Company, Inc. ("Sugar Creek") service area. Petitioner now owns and operates these facilities.

**4. Petitioner's Evidence.** Ms. Fisher initially discussed NineStar's purchase of GEM Water, Inc. ("GEM"). She testified that when the Order in Cause No. 45138 was issued on December 19, 2018, approving GEM's sale to Petitioner, NineStar was organized under Ind. Code § 8-1-17.5-1 *et seq.*, and under Ind. Code § 8-1-17.5-7, as the surviving corporation, NineStar has all the powers and may provide any of the services either party to that sale had or could have provided prior to this transaction. She stated Ind. Code § 8-1-17.5-18 provides that the surviving corporation may perform any acts necessary or convenient for carrying out the purposes of the corporation, including the right to borrow money or otherwise contract indebtedness. Ms. Fisher testified that NineStar has the power to issue obligations under Ind. Code § 8-1-17.5-20, and those obligations can be sold in the manner its Board of Directors determines is appropriate. She also stated Ind. Code § 8-1-17.5-25 lists those areas of ongoing Commission jurisdiction over Petitioner, and Ms. Fisher testified she found nothing within that statute permitting the Commission to exercise regulatory authority over NineStar's borrowing of long-term debt.

Notwithstanding the foregoing, Ms. Fisher testified that Rural Development is requiring

NineStar to obtain all necessary approvals prior to closing on the proposed borrowing, and based on discussions with Rural Development, NineStar concluded Rural Development believes the Commission may regulate NineStar's ability to borrow money and establish rates to repay that debt. She noted the Commission's website lists Hancock County Rural Telephone Corporation d/b/a NineStar as a jurisdictional water and wastewater utility. Accordingly, because time is of the essence on moving forward with the Rural Development loan, NineStar decided it was best to come to the Commission and seek authority to borrow funds from Rural Development, to the extent such authority is necessary. She advised that in doing so, NineStar is also following its counsel's recommendations. Ms. Fisher stated Petitioner's Board has approved the proposed borrowing, and she testified the improvements to be constructed with these funds will assist NineStar in providing sewer service to NineStar's existing customers who were formerly Sugar Creek customers.

Mr. Crow generally described the facilities NineStar uses within the former Sugar Creek area and the improvements planned. He stated Petitioner's Sugar Creek area serves the Riley Village neighborhood and the Heartland Resort Campground just north of Interstate 70 in Hancock County. The existing sewer facilities include a wastewater treatment plant and various collection facilities, with the collection system consisting of 10,500 linear feet of 12 inch gravity sewer ranging in size from six to 12 inches. Mr. Crow testified a portion of these gravity sewers run under homes within the Sugar Creek area, and NineStar plans to replace this collection system so its facilities are under the road. More specifically, NineStar is proposing to install approximately 3,600 linear feet of 12 inch gravity sewer under the road. The existing sewer infrastructure will be abandoned in place by injecting fill into the sewer. Mr. Crow stated this will enhance maintenance of the collection system. Additionally, NineStar will be replacing the service laterals in this area because many of the laterals from the homes in Riley Village are defective; therefore, Petitioner's project will install 7,900 linear feet of appropriate laterals to each of the homes within Riley Village. He added that a portion of the existing collection facilities also includes a ductile iron pipe running under Sugar Creek that is to be lined.

Mr. Crow testified that when it rains, the Sugar Creek area is significantly impacted by infiltration. The projects described above are intended to reduce infiltration and solve problems related to ongoing maintenance. Mr. Crow provided the Preliminary Engineering Report ("PER") his firm prepared for this project, noting the PER provides additional information on the improvements to be made to the collection system Petitioner acquired from Sugar Creek.

Mr. Crow also discussed the expected useful life of the improvements NineStar is proposing. He stated PVC pipes can have a useful life of up to 100 years, and the concrete structures to which these pipes will connect have a useful life of up to 75 years. For purposes of the subject borrowing, in his opinion, these improvements have a useful life of at least 50 years. He stated the old Sugar Creek facilities have experienced numerous problems that the improvements described in the PER should resolve. Mr. Crow added that the wastewater treatment plant NineStar is currently operating is an advance treatment plant designed to handle wastewater treatment beyond the old Sugar Creek service area; therefore, improving the former Sugar Creek facilities will assist NineStar in moving towards a regional wastewater treatment approach in western Hancock County consistent with the State of Indiana's encouragement to move toward regionalization of wastewater facilities. Mr. Crow opined that the planned improvements are reasonable and will eliminate sewer collection facilities beneath property owners' homes, reduce infiltration created by major rainfall, and ultimately enable NineStar to provide better service to

its sewer customers at a reasonable rate.

Mr. Crow testified that NineStar has submitted the PER to Rural Development for review, has had numerous related discussions with Rural Development, and expects Rural Development's approval of its project soon. NineStar also expects Rural Development will provide NineStar with the funds to construct the identified improvements, with closing with Rural Development anticipated to occur in the first quarter of 2022. Mr. Crow advised that from his perspective, given the funding process the United States Department of Agriculture and all federal agencies have been facing and the delays in the supply chain from COVID-19, the best course was for NineStar to approach the Commission as it has in this Cause without waiting to receive Rural Development's commitment, answer any questions the Commission may have about this borrowing, receive an Order from the Commission authorizing the borrowing, and, ultimately, advise the Commission when the borrowing has closed. He stated this approach will position NineStar to quickly move forward with the improvements as soon as funds are available from Rural Development and also enable NineStar to better manage its sewer service and improve that service to its customers.

Mr. Ridlen described the prospective borrowing from Rural Development, advising that Petitioner expects Rural Development will loan NineStar up to \$1,800,000 to improve the sewage facilities in its Sugar Creek service area. He stated Petitioner anticipates some of these funds may be in the form of a grant from Rural Development, but at this time, Rural Development has not determined which portion could be eligible for grant funds. Mr. Ridlen expects Rural Development to make a final determination upon grant funds early in 2022, and Petitioner will provide that information to the OUCC and the Commission within ten days after its receipt.

Mr. Ridlen testified this borrowing will impact Petitioner's sewer rates. Currently, these rates average \$48.27 per month. He expects the repayment of this borrowing to cause rates to increase to \$65.83 per month. Mr. Ridlen explained that while the commitment of funds by Rural Development is solely for the Sugar Creek area, NineStar intends to establish unified sewer service rates throughout its sewer service area; consequently, the anticipated increase in the sewer rates for the Sugar Creek area customers will result in the same sewer rates for residential service in other areas NineStar serves. He sponsored Exhibit B of Exhibit ELR-1 showing the estimated amortization schedule for repayment of the funds to be borrowed from Rural Development over 40 years at an average interest rate of 1.75%. Mr. Ridlen noted the amortization reflects Petitioner borrowing the entire \$1,800,000 and, therefore, to the extent grant funds are provided, the final amortization will reflect a lower repayment amount.

Per Mr. Ridlen, Petitioner has several necessary sewer and water projects to complete over the next several years. Given the need for these improvements, NineStar has sought the least cost financing available to minimally impact its customers and still make the necessary improvements. He stated that for this sewer project, borrowing from Rural Development affords an extended time frame for repayment and a lower interest rate impact than Petitioner's other available options.

Mr. Ridlen noted that Petitioner's Board is elected by its customers; therefore, if NineStar's customers believe Petitioner is being mismanaged or its rates are not based on the cost of providing service, customers may elect new directors to change the management approach and/or reject unreasonable rates. Additionally, he stated the Commission retains some regulatory authority over NineStar.

In its response to the Commission's docket entry questions, NineStar explained certain revenue and expense adjustments shown on Petitioner's supporting financial exhibits. Petitioner also confirmed that Rural Development requires a minimum debt service coverage of 1.30 from NineStar, calculated on a "standalone" basis, *i.e.*, based solely on revenue and existing debt requirements for the utility division and excluding interdivisional revenue. NineStar also indicated that its interest expense is not presently supported by the water utility division alone, with the water utility's debt service having historically been supported by Petitioner's parent company, and more specifically, its for-profit entity.

**5. OUCC's Direct Evidence.** Mr. Dellinger recommended the Commission approve Petitioner's proposed financing, subject to certain restrictions and reporting requirements. He agreed with NineStar's proposed structure of the new debt issuance and opined that Rural Development loans, when available, are an ideal form of financing for wastewater utilities as these loans combine low interest rates with an extended 40-year term. He stated a 40-year term more closely aligns with the anticipated lifespan of the assets being financed, which is generally the goal for any debt financing of assets. Mr. Dellinger testified that between now and when Petitioner's interest rates are set, it is possible interest rates could go higher than 1.75%, so he proposed the Commission authorize this borrowing at interest rates not to exceed 4.0%. Mr. Dellinger stated this minimal increase in the approved interest rate level will not impact the prudence of this financing, but it will provide flexibility if interest rates increase before Petitioner's financing closes and, therefore, mitigate possible disruption and additional expense and time, while still protecting ratepayers in the unlikely event of a large move upwards in interest rates. Mr. Dellinger also expressed confidence that NineStar will explore Rural Development grant opportunities to reduce ratepayers' costs and only use the level of debt authority necessary. He noted NineStar has agreed to advise the Commission and the OUCC within ten days of receiving information on its level of grant funding, and he confirmed the OUCC is satisfied with this position.

Mr. Dellinger recommended NineStar be required to file a report within 30 days of closing on its long-term debt issuance that explains the terms of the loan, including the total amount borrowed, interest rate, and the required amount of debt service reserve. He stated the report should also itemize all issuance costs as well as provide the bid tabulations for the projects financed, including engineering costs. Mr. Dellinger also proposed that Petitioner's financing authority expire 365 days after the Order is approved in this Cause. Additionally, he recommended the Commission approve financing from Rural Development not to exceed \$1,800,000.

Ms. Willoughby described NineStar's characteristics and current wastewater facilities. She stated NineStar acquired Sugar Creek and Philadelphia Water Works' facilities in 2016 following the Commission's approval in Cause No. 44776. She advised that at the time of its acquisition, Sugar Creek was under an Agreed Order ("AO") with the Indiana Department of Environmental Management. The AO was transferred to NineStar, and although NineStar has constructed a new wastewater plant in Philadelphia to fulfill part of the AO requirements, additional improvements are needed to reduce inflow and infiltration and to help Petitioner make progress in meeting effluent limits in its National Pollutant Discharge Elimination System permit. Ms. Willoughby discussed the completed PER and stated the improvements appear to be reasonable and should enhance NineStar's ability to efficiently serve its customers. She recommended the Commission find Petitioner's planned sewer replacement and lining projects justify its requested borrowing.

**6. Commission Discussion and Findings.** In this proceeding, the Commission is tasked with determining the propriety of NineStar's requested financing authority in order to make certain improvements to Petitioner's wastewater collection system. As discussed below, the Commission finds the proposed long-term loan of up to \$1,800,000 from Rural Development is reasonably necessary to enable NineStar to improve its wastewater service in the Sugar Creek area and fulfill the AO and other requirements; consequently, the Commission finds that NineStar's proposed use of these funds will serve the public interest, and Petitioner's requested financing, to the extent the Commission has jurisdiction with respect thereto, should be approved.

The evidence shows the purpose of the proposed long-term debt is for needed improvements to the collection system and treatment facilities in a portion of NineStar's service area previously acquired from another utility while that utility was subject to an AO. NineStar's witness Crow described the improvements, and Petitioner shared the estimated costs. NineStar's witnesses confirmed that the borrowing authority NineStar requests is for long-term debt not to exceed \$1,800,000 to be borrowed from Rural Development, the maximum term of years, and the maximum average interest rate. The evidence also includes a potential amortization of this long-term debt if the maximum amount is borrowed, but NineStar anticipates some of the funds will be received as a grant. The Commission finds that NineStar demonstrated the need for and reasonableness of the improvements NineStar will be making with the borrowed funds. Under Ind. Code § 8-1-4-1, the amount of such a loan to a public utility is not to be greater than the fair value of the property of the public utility, "including any acquisitions, construction extensions, additions, and betterments to such property to be financed in whole or in part by such issue or the proceeds thereof, as found by the commission."<sup>2</sup> The record demonstrates the maximum amount of the loan (\$1,800,000) is not greater than NineStar's net capital assets as of March 2021 and the additional plant of \$1,777,500. OUCC witness Dellinger recommended the proposed financing be approved.

Ind. Code §§ 8-1-2-78 through -81 addresses the issuance of long-term debt by a public utility to provide funds for the construction, completion, extension, or improvement of facilities. *See also* Ind. Code § 8-1-2-125. OUCC witness Willoughby stated the improvements NineStar has identified to complete with these funds are reasonable and should enhance the utility's ability to effectively and efficiently serve its customers. Petitioner seeks the Commission's authority, to the extent required, to issue \$1,800,000 in long-term debt at a rate not to exceed 1.75%. The OUCC recommended Petitioner receive such authority but at an interest rate not to exceed 4.0% to afford increased flexibility. Mr. Dellinger explained how this modest increase in the interest rate could benefit Petitioner while also protecting its ratepayers. Based on the record, to the extent the Commission has jurisdiction over NineStar's issuance of long-term debt, the Commission authorizes NineStar to issue long-term debt of up to \$1,800,000 at a term of no more than 40 years at an average interest rate not to exceed 4.0% with Rural Development. The Commission further finds that NineStar should continue its efforts to secure grant funds to reduce NineStar's actual borrowing level. Petitioner is, therefore, directed to provide a written update under this Cause within ten days of receiving information on any grants to be received from Rural Development.

Mr. Dellinger recommended this borrowing authorization expire 365 days from the date of this Order, and he proposed certain reporting requirements. NineStar did not object to Mr. Dellinger's recommendations or present rebuttal evidence opposing these recommendations.

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<sup>2</sup> *See also* Ind. Code § 8-1-2-79.

Given the record, the Commission finds his recommendations are reasonable; therefore, the Commission's authorization hereunder for financing shall expire 365 days from the date of this Order. Further, based on the evidence, the Commission finds the recommended reporting is reasonable and orders Petitioner to file under this Cause, no later than 30 days after closing, a report setting forth the terms of the borrowing. This report shall include, at a minimum, the total amount borrowed, interest rate, and required amount of debt service reserve. In addition, Petitioner is directed to itemize all issuance costs, provide the bid tabulations for the projects financed, and set forth the engineering costs to the extent known.

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

1. To the extent the Commission has jurisdiction over NineStar's proposed long-term borrowing, Petitioner is authorized to incur long-term indebtedness not to exceed \$1,800,000 from Rural Development for a period of no more than 40 years at an average interest rate not to exceed 4.0%; provided, such borrowing authority, to the extent unused, shall expire 365 days from the date this Order is approved.

2. Within 30 days following the closing on the debt approved above, NineStar shall file under this Cause a report setting forth the terms of the borrowing, including the total amount borrowed, interest rate, and the required amount of debt service reserve. The report shall also itemize all issuance costs and provide the bid tabulations for the projects financed, including engineering costs to the extent known.

3. NineStar shall provide a written update under this Cause within ten days of receiving confirmation of any grants to be received from Rural Development.

4. This Order shall be effective on or after the date of its approval.

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

**APPROVED: APR 06 2022**

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

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**Dana Kosco  
Secretary of the Commission**