

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF THE CITY OF EVANSVILLE,)
INDIANA, FOR AUTHORITY TO ISSUE BONDS,)
NOTES, OR OTHER OBLIGATIONS, FOR)
AUTHORITY TO INCREASE ITS RATES AND) CAUSE NO. 45073
CHARGES FOR WATER SERVICE, AND FOR)
APPROVAL OF NEW SCHEDULES OF WATER)
RATES AND CHARGES.)

OUCC’S BRIEF IN SUPPORT OF OUCC’S PROPOSED ORDER

Petitioner began its Brief in Support of its Proposed Order (*Evansville’s PO Brief*) by asserting “this case appears to be all about estimates.” But for Petitioner, this case really is about achieving the precise level of rate increase its local officials approved, regardless of the evidence presented. Indeed, Petitioner maintains that any savings, double recovery, or improper expense the OUCC has identified should be disregarded to allow more funds for projects Petitioner did not include in its case. Such proposition should be rejected.

This case is really about whether a utility must provide evidence to justify the financing authority it seeks. The OUCC maintains it must. As this Commission has pointed out to Evansville in an earlier rate case, there is a two-prong standard to review proposed debt issuances.

First, we consider whether the proposed capital improvements are reasonably necessary for the provision of adequate and efficient utility service. Second, we determine whether the proposed debt issuance is a reasonable method for financing the necessary capital improvements.

Evansville, Cause No. 44123, p. 2. (emphasis added.)

“Whether the proposed capital improvements are reasonably necessary for the provision of

adequate and efficient utility service” – can only be determined when the proposed capital improvements are presented in a meaningful manner for their consideration. In its case-in-chief, Petitioner listed the capital improvements it intended to complete in the next three years, and for which it sought financing approval.¹ It did not provide any meaningful support for financing authority for other projects. In fact, it did not even identify those projects. Vague references to alternative support for financing authority is not evidence.²

After considering all the proposed infrastructure replacement projects, the OUCC agreed the projects listed in Petitioner’s three year CIP plan should be built and justified financing approval.³ But the OUCC did not agree Evansville has based the borrowing on appropriate project estimates. For instance, while Petitioner estimated a replacement cost for water mains of \$455 per foot, its own evidence indicates an actual cost per foot of \$318. (Attachment ML-1R) The OUCC also identified instances of the same projects being used to support both its E&R revenue requirement and its proposed borrowing. Petitioner has asked the Commission to ignore such things.

Petitioner seems little concerned with this difference, as it has decided its ratepayers should pay the rate increase it has determined regardless of the actual costs of the projects in its three year

1 Mr. Parks noted Petitioner did not include in its case-in-chief project descriptions, but instead only listed project names, the year for completion, and a single line estimated cost with no detail.

2 Referring to the “thirty year Master Plan which includes an estimated \$132.5 million of planned distribution system projects in the CIP,” Petitioner’s accounting witness testified that any “potential savings or offsets to our revenue requirement” be used to “partially fund these identified and unfunded distribution replacement projects.” Petitioner’s Exhibit No. 1, p. 10.

3 The OUCC did oppose Petitioner’s request for financing authority to borrow \$18 million to construct a new 6 MG clearwell and high service pump station to “perform maintenance, inspection and repairs on the existing 6.5 million gallon clear well (that is 50 years old) and create redundancy in the system.” (Public’s Exhibit No. 3, p. 19-20) The foregoing is a replacement project.

plan or any other decrease to its revenue requirements. Petitioner proposes it receive the same level of rate increase regardless of the results of the OUCC's rate review or the Commission's findings with respect to issues raised. The quality of its evidence or the accuracy of its rate analysis do not matter. All that matters is that it achieve the level of rate increase its local officials have authorized.

Petitioner asserts such a result is encouraged by IC 8-1-2-0.5. Achieving savings, avoiding double recovery of capital costs, and eliminating improper expenses to the benefit of ratepayers through lower rates is not prohibited by IC 8-1-2-0.5 as Petitioner implies. Indeed, it encourages it. All of the actions the legislature encourages should be done "while protecting the affordability of utility services for present and future generations of Indiana citizens." Ind. Code § 8-1-2-0.5. (emphasis added.) This includes a borrowing that more closely matches the projected projects. Petitioner's approach shows a lack of appreciation for the very statute it continues to recite.

The call for conditions under which utilities will "plan for and invest in infrastructure necessary for operation and maintenance while protecting the affordability of utility services for present and future generations of Indiana citizens" does not justify the approach Petitioner has taken in this case. Accurate and realistic cost estimates are vital conditions that promote this stated goal. As OUCC witness Mr. Kaufman testified, it is important to accurately estimate a municipal utility's annual debt service costs because "an accurate and reasonable estimate of annual debt service costs balances the needs of the utility with the interests of the ratepayers." Public's Exhibit No. 5, p. 3 "A utility needs revenues sufficient to meet its real debt service requirements, while ratepayers are entitled to rates that do not exceed actual debt service requirements." Likewise, a

utility's borrowing should be based on what it realistically needs to complete its projects as projected during its rate cycle.

In its brief, Petitioner characterized its infrastructure improvement plan as "aggressive." Importantly, the OUCC did not argue Evansville's infrastructure replacement program, replacing 15 miles of main per year, is too aggressive to be approved. Rather, the OUCC pointed out that Petitioner's estimated costs to complete those projects identified in its case-in-chief are unrealistic, double counted and inflated resulting in unnecessary borrowing and unnecessarily high rates for its rate payers. (See Table 8, p. 17 Public's Exhibit No. 3.)

The OUCC did express doubt about the ability of Evansville to complete the three years of projects it used to justify the borrowing of more than \$147,000,000. The OUCC suggested that, without a history of procuring such level of spending, it would be difficult for Evansville to achieve those projects as anticipated. Nonetheless, while disagreeing with Petitioner's project cost estimates, the OUCC did not assert that Evansville's "aggressive" main replacement program should be pared down. It did not recommend any of the projects identified in Petitioner's case-in-chief be eliminated because of such doubts. But that position was based on the projects Petitioner included in its case-in-chief. Petitioner did not make a case for the appropriateness of borrowing funds to complete any of the other projects in its thirty year master plan. In any case, ratepayers should not be forced to pay higher rates so that Petitioner can pool money for projects that were not directly used to justify the borrowing in Petitioner's case. The Commission should authorize financing based only on the projects Petitioner presented in its case-in-chief.

Petitioner asserts that if Petitioner correctly estimated its costs, the OUCC's proposal

would bring Evansville's infrastructure replacement program to a screeching halt. *Evansville's PO Brief*, p. 5. This claim should be viewed in context and rejected. In Cause No. 44760, Evansville was authorized rates for a \$15 million per year four year capital plan (2017 – 2020). In this case, the OUCC maintains that Evansville should be permitted to borrow \$115,115,000 for a three year capital improvement plan (2019-2021). Combined with its E&R revenue requirement Evansville would have an unprecedented amount of cash with which to complete three years of capital improvements – over \$41 million per year. Compared to Evansville's current rates, the borrowing authority the OUCC proposes would nearly triple the funding available for infrastructure projects. The OUCC's recommendation must be viewed in light of the Commission's role, which is not changed by the Indiana General Assembly's expression of the continuing policy of the state. The OUCC's recommendation balances Petitioner's request with its ratepayer's interest in principles of affordability for existing and future customers. Foremost among those principles is that the utility's case be based on evidence presented in a manner that allows a reasonable review and investigation of the facts. A vague reference to \$132.5 million of other projects in a thirty year plan is not such evidence.

Petitioner states that "As this Commission well understands, rate increases are extremely difficult for elected officials. Petitioner's brief, p. 3. Presumably, Petitioner understands that rate increases are difficult in a different way for customers of water utilities, especially those who struggle to live within their means. Petitioner asserts the local officials carefully balanced the level of need, the size of the increase, and the required level of urgency. It is clear from the tenor of Petitioner's case, its response to the OUCC's testimony, and the brief it elected to submit with its proposed order that it considers the inquiry it says its officials engaged in should be considered to

end the inquiry as to what its rates should be. This suggests any decrease should be off limits to the OUCC and the Commission. Petitioner's position operates as if it has opted out of Commission jurisdiction for rates and financing. It has not.

Evansville says "There simply is no excuse to cut Evansville's request in half when there are other needs to be met that far exceed any savings produced by the OUCC's different estimates."⁴ Evansville's PO Brief, p. 7. Certainly all municipal water utilities have a need to replace infrastructure. What Evansville says justifies it not having its rate increase reduced (unfunded future project needs) is true for every municipal water utility. They all need to replace plant. And yet, they must still justify their rates and their borrowing authority with evidence of the projects they intend to complete using reasonable and accurate estimates of project costs. Rates must be based on more than evidence of aging infrastructure and a general plan to replace that infrastructure. Petitioner's rates should be based on evidence it presents in its case of actual projects it intends to complete with a reasonable basis for cost estimates so that its proposal may be appropriately reviewed and an appropriate level of rate increase determined. Projects should be adequately planned, prioritized, and supported with reasonable project cost estimates. These are the conditions under which utilities should "plan for and invest in infrastructure necessary for the operation and maintenance of the utility while protecting the affordability of utility services for present and future generations of Indiana citizens." IC 8-1-2-0.5.

Petitioner implies it is not even required to list or otherwise identify the projects for which it seeks financing authority. Evansville's PO Brief, p. 6. Petitioner seems to ignore its own burden

⁴ As the OUCC's proposed order indicates, the OUCC's recommended decrease in Petitioner's borrowing authority is not the only driver of the difference.

of proof and miss the mark as to the Commission's role in rate and financing cases. Petitioner's request for a 48% rate increase now depends on other projects it did not identify in its case-in-chief. Petitioner's evidentiary obligation begins with identifying in its case the projects it is borrowing money to complete and should be follow-up by proof as to why those projects are reasonable and necessary. In short, Petitioner's first obligation is to recognize that *it* is the petitioner for relief. Recognizing this fact is not mere legal maneuvering as Petitioner has suggested. It is the process that affords all concern parties due process including Petitioner.

The OUCC reviewed the case-in-chief Petitioner presented. It identified project cost estimates it considered to be overstated as well as differences and disagreements with some of Petitioner's other revenue requirements. The rate relief the Commission affords Petitioner should be based on its consideration and determination of those issues. Reliance on the existence of projects Petitioner did not present in its case-in-chief should be rejected.

Respectfully Submitted,

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR


Daniel M. Le Vay, Atty. No. 22184-49
Deputy Consumer Counselor

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing *Office of Utility Consumer Counselor Brief in Support of OUCC's Proposed Order* has been served upon the following counsel of record in the captioned proceeding by electronic service on October 15, 2017.

Nicholas K. Kile
Hillary J. Close
Lauren M. Box
BARNES & THORNBURG LLP
11 South Meridian Street
Indianapolis, Indiana 46204
Email: nicholas.kile@btlaw.com
hillary.close@btlaw.com
lbox@btlaw.com



Daniel M. Le Vay
Deputy Consumer Counselor

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR
115 West Washington Street
Suite 1500 South
Indianapolis, IN 46204
infomgt@oucc.in.gov
317/232-2494 – Phone
317/232-5923 – Facsimile