FILED November 20, 2012 INDIANA UTILITY REGULATORY COMMISSION

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF THE CITY OF EVANSVILLE,	1	
)	
INDIANA, BY ITS WATER AND SEWER)	
UTILITY BOARD, FOR AUTHORITY TO)	
ISSUE BONDS, NOTES, OR OTHER)	
OBLIGATIONS, FOR AUTHORITY TO)	
INCREASE ITS RATES AND CHARGES)	
FOR WATER SERVICE, AND FOR)	CAUSE NO. 44137
APPROVAL OF NEW SCHEDULES OF)	
WATER RATES, CHARGES, AND RULES)	
AND REGULATIONS FOR WATER)	
SERVICE AND FOR APPROVAL OF)	
ACCOUNTING AND RATEMAKING)	
TREATMENT FOR WATER SERVICE)	
TO REFLECT THE IMPACT OF)	
ANTICIPATED CAPITAL REQUIREMENTS)	

PETITIONER'S RESPONSE TO OUCC'S PROPOSED ORDER

The Indiana Office of Utility Consumer Counselor ("OUCC") filed its proposed order on November 9, 2012. Pursuant to the schedule accepted at the conclusion of the evidentiary hearing in this cause on September 18, 2012, the petitioner, the City of Evansville Water and Sewer Utility ("Evansville"), now responds as follows:

- I. Evansville appreciates the fact that the OUCC's proposed order evidences a further narrowing of the parties' differences. Specifically, since the evidentiary hearing in this cause, the OUCC has accepted the language proposed by Evansville concerning: (a) the inclusion of a pre-funded debt service reserve; (b) the approval of bonding authority at rates capped by the MMD "A" Scale plus 50 basis points; and (c) the treatment of annual expenses for the replacement of the filter media at Evansville's water treatment plant.
- 2. While it is tempting for Evansville to acquiesce in the OUCC's remaining points of contention simply in the interest of expediting much-needed rate relief, the untenability of the

OUCC's assertions and the materiality of the remaining dollar difference between the parties' two positions compel Evansville to reaffirm its previous position.

3. The three areas of continuing disagreement involve the OUCC's desire to impute estimated savings from a capital improvement project not yet undertaken, the financing for which has been denied by the Commission in Cause No. 44123; whether the utility's rates should be based on receiving revenues from a business that has announced during Evansville's 12-month post-test-year adjustment period that it will be closing after that adjustment period; and whether the Commission should ignore the actual amount of the utility's insurance expense because the OUCC prefers that the Commission impute an insurance expense based on a different methodology, the result of which is not in the record and which may be greater or less than the utility's actual insurance expense.

Imputing Revenue Projected from Evansville's Unapproved Performance Contract

4. Evansville has agreed to the terms of a guaranteed performance contract ("Contract") with Johnson Controls, Inc. to, among other things, replace or repair most of its water meters. That Contract is contingent on Evansville receiving approval from the IURC for financing the multi-million dollar cost of these improvements. Evansville and Johnson Controls petitioned the IURC for approval of the Contract and associated financing in Cause No. 44123 in late 2011. However, the Commission denied the request for financing of the Contract projects on August 15, 2012 based on concerns that the projected savings did not exceed the projected financing costs by at least 10%. Although Evansville sought to introduce evidence on rehearing in that cause that the project would meet the Commission's 10% reserve requirement, in its October 31, 2012 order denying rehearing the Commission found that such evidence was not appropriately introduced on rehearing and encouraged the parties to instead file a new case.

- 5. The OUCC does not dispute the fact that it is seeking to impute to Evansville revenues it has not realized either during the test year or in the twelve-month post-test-year adjustment period. Nor does the OUCC dispute the fact that the financing costs for the meter replacement project are not included in its rate calculations. Dismissing these essential deficiencies in its position, the OUCC advocates that the Commission cherry-pick a subset of the meters to be repaired or replaced as part of the overall Contract and capture in this rate case only those estimated savings from customers served by the largest meters. At the same time, the OUCC noted its continuing support for the Contract, which it never introduced into the record, and all of its interdependent components, ignoring the implications that skimming estimated savings would have on the viability of the rest of the Contract. For example, with its limited focus on the estimated savings from the largest meters, the OUCC made no attempt to explain how Evansville should fund the replacement of more than 44,000 smaller residential water meters also called for under the Contract.
- 6. Citing no authority for its sweeping departure from ratemaking principles, the OUCC would have this Commission find that "the revenues that would have been realized if Petitioner had replaced the meters by the end of the adjustment period (ending December 31, 2012) should be recognized for ratemaking purposes." OUCC Proposed Order at 12. If the Commission were to adopt the OUCC's hypothetical revenue adjustment, it would necessarily also need to provide Evansville the opportunity to develop and introduce a corresponding hypothetical cost adjustment. Rather than follow the OUCC down the rabbit hole of hindsight micromanagement of a municipal utility, the Commission should hew to established standards for adjustments to be fully fixed, known and measurable within the constraints of the test year and adjustment period. The OUCC relies entirely on a schedule of savings that was developed

by Evansville and Johnson Controls with the assumption that the Commission would approve the financing for the Contract "and the financing was completed prior to the work actually getting done." Tr. at B-54. Without these associated financing costs, the amount of any revenue adjustment cannot be fully fixed, known and measurable.

Closure of Whirlpool Facility

- 7. Evansville anticipates modest growth in its sales of water to commercial and industrial customers in future years. Although the actual amount is necessarily an estimate, based on data from Evansville's test year and adjustment period, with one exception Evansville and the OUCC agreed on an amount to include in Evansville's projected revenues for purposes of setting its rates. The exception concerns \$30,244 in revenues from one of Evansville's commercial customers, Whirlpool's refrigeration product development facility, which will be closed but not until after the end of the adjustment period.
- 8. Unlike the unknown impact of the unimplemented Contract, where the project's costs are generally projected to be offset by savings, including from large meter replacements, the impact of the Whirlpool facility's closure on Evansville's projected growth in commercial and industrial sales is fixed, known and measurable. The \$30,244 in revenue from this customer is going away. Yet the OUCC would have the Commission don blinders to a known decrease in future revenue from this current customer.
- 9. The customer growth adjustment applied to test year revenues is not so one-sided. When inflating a utility's revenues for projected future growth in sales based on its adjusted test year experience, the Commission must take into account all relevant data from the test year and adjustment period, including a known example of reduced growth such as an announced plant closure.

Insurance Costs

- 10. The City of Evansville provides health and life insurance coverage to municipal employees, including the employees of its water utility. It allocates the common cost of this insurance based on the total number of covered employees budgeted for each department, including the water utility. The OUCC erroneously asserts that because the utility's budgeted employee count may at any given time be greater than its actual employee count due to one or more vacancies, its insurance assessment from the City does not reflect what its actual cost will be. While the OUCC purports to advocate that Evansville's water rates reflect its actual cost to provide health and life insurance coverage to its employees, the OUCC's proposal to decrease Evansville's insurance expense adjustment by \$67,522 would do the opposite, stranding that amount of legitimate, actual expense.
- for the City to allocate common insurance costs would impact the water utility, to say nothing of whether it would even be feasible. But it is not at all clear that these costs would be any less than under the existing structure. If, for example, every department has the same percentage of unfilled budgeted positions as the water utility, then a consistent application of the OUCC's preferred alternative methodology for allocating common insurance costs among the City's departments would result in no change in the water utility's share of these costs. Of course, if the utility experiences relatively fewer open budgeted positions than other departments, then its share of the insurance costs would be even greater under the OUCC's methodology. The OUCC, however, appears to have no interest in consistency, preferring instead that this Commission take the City's insurance cost developed pursuant to one methodology, on a per budgeted employee basis, and multiply that by the water utility's actual employee count, thereby ensuring that

Evansville recovers less than its actual insurance costs. The Commission should give the OUCC's position no credence and instead adopt the full \$114,041 insurance expense adjustment

as proposed by Evansville.

The OUCC's Revenue Requirements Chart Should Not Be Relied Upon

12. Finally, Evansville notes that even if the Commission were to accept the OUCC's

proposed adjustments, the pro forma annual revenue requirement chart contained in its proposed

order appears to be incorrect. In its proposed order, the OUCC agrees with Evansville's

proposed Debt Service Reserve funding, proposed par amount of bonds and interest rate

assumptions on the proposed bonds. Yet the debt service revenue requirement set forth in the

chart on page 14 of the OUCC's proposed order has not changed from the revised debt service

requirement it filed on September 18, 2012. The language in the OUCC's proposed order also

would have the Commission accept Evansville's proposed expedited filter media replacement

periodic maintenance schedule, but the OUCC's proposed operating expenses do not reflect this

treatment. The OUCC's revenue requirements chart also appears to omit the adjustment for

additional revenues proposed by the OUCC but not, as reiterated above, accepted by Evansville.

On behalf of its customers, whose field hearing testimony amply demonstrated support

for its request for rate relief, Evansville urges the Commission promptly to adopt its proposed

order as filed on October 12, 2012.

CITY OF EVANSVILLE

WATER AND SEWER UTILITY

Its attorn

Date: November 20, 2012

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CERTIFICATE OF SERVICE

The undersigned counsel certifies that on November 20, 2012, a copy of the Petitioner's Response to the OUCC's Proposed Order has been served by electronic mail on the Indiana Office of the Utility Consumer Counselor addressed to its counsel, Daniel LeVay at the following address: dlevay@oucc.IN.gov and also at infomgt@oucc.IN.gov.