

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF THE CITY OF) BOONVILLE, INDIANA, FOR) AUTHORITY TO ISSUE BONDS AND) FOR APPROVAL OF A NEW SCHEDULE) OF RATES AND CHARGES))))))	CAUSE NO. 43477 S1 APPROVED: APR 08 2009
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BY THE COMMISSION:

Gregory D. Server, Commissioner
Aaron A. Schmoll, Administrative Law Judge

In the Main Docket of this proceeding, Cause No. 43477, the Petitioner, the City of Boonville, Indiana (“Petitioner”) sought Indiana Utility Regulatory Commission (“Commission”) approval of a new schedule of rates and charges for its municipal water utility to cover increased operating expenses and costs associated with financing proposed additions and improvements to Petitioner’s municipal water utility system. Petitioner also sought authority to finance those additions and improvements through the issuance of revenue bonds in one or more series. The Commission approved a portion of the requested rate increase in its December 10, 2008 Order, but deferred certain issues to this Subdocket to allow Petitioner to present additional evidence on alternatives to the capital improvement project Petitioner originally proposed. Specifically, the Commission directed Petitioner to file additional evidence on the cost to repair Petitioner’s existing water treatment plant and make other system improvements needed to avoid or postpone having to construct a new treatment facility such as the one Petitioner originally proposed in the Main Docket of this proceeding.

Pursuant to notice, the Commission conducted a Prehearing Conference in this Subdocket on January 15, 2009, at 9:00 a.m., in Room 224 of the National City Center, Indianapolis, Indiana. Petitioner and the Office of Utility Consumer Counselor (“OUCC”) attended the Prehearing Conference. The Intervenor, Donald G. Hendrickson, and his counsel did not attend, but consented to the proposed procedural schedule, which was approved in the Commission’s Prehearing Conference Order. No other members of the general public appeared at the Prehearing Conference, and no other intervention requests were filed.

Pursuant to the Prehearing Conference Order, Petitioner prefiled its case-in-chief in this Subdocket on January 15, 2009, addressing the issues the Commission deferred to this Subdocket in its December 10, 2008 Order in Cause No. 43477. Petitioner’s case-in-chief included an analysis of three different approaches to meeting its current system improvement needs, together with associated financing options and the anticipated rate impact of each option.

Before the deadline established for the OUCC and Intervenor to prefile responsive testimony, the Presiding Administrative Law Judge requested the Parties to advise the Commission whether a settlement hearing should be scheduled before the April 15, 2009 evidentiary hearing. The Parties agreed to modify the original procedural schedule to include a public evidentiary settlement hearing on April 1, 2009. On March 26, 2009, Petitioner and the OUCC (collectively, referred to herein as “the Settling Parties”) filed a Joint Stipulation and Settlement Agreement (“Settlement Agreement”), together with supporting testimony.

The Intervenor is not a party to the proposed Settlement Agreement. The Intervenor Prefiled Direct Testimony of Donald G. Hendrickson was filed in this Subdocket on March 9, 2009. Thereafter, the Prefiled Supplemental Direct Testimony of Donald G. Hendrickson was filed with the Commission on April 1, 2009.

Pursuant to legal notice duly published in accordance with Indiana law, the Commission convened a public evidentiary hearing on the proposed Settlement Agreement on April 1, 2009 at 10:30 a.m. in Room 222 of the National City Center, Indianapolis, Indiana. Petitioner and the OUCC appeared by counsel; Intervenor appeared without counsel. Each party presented their respective evidence at the settlement hearing, which was offered and admitted into the record without objection. No members of the general public participated at the settlement hearing.

The Settling Parties tendered a Joint Proposed Order on April 1, 2009. Pursuant to the posthearing briefing schedule agreed to at the hearing, Intervenor emailed the Presiding Administrative Law Judge his objections to the Joint Proposed Order on April 2, 2009. Petitioner emailed responsive testimony to the Presiding Administrative Law Judge on April 3, 2009. On April 6, 2009, Intervenor faxed a Motion to Dismiss to the Commission's offices. On April 7, 2009, Petitioner and the OUCC filed a Joint Motion to Strike Intervenor's Motion to Dismiss.¹

Based upon applicable law and the evidence of record in this Cause, the Commission now finds that:

1. **Notice and Jurisdiction.** Petitioner owns and operates a "municipally owned utility" as that phrase is used in Indiana Code § 8-1-2-1(h). Petitioner is subject to the jurisdiction of this Commission under Indiana law including, without limitation, Ind. Code § 8-1.5-3 and Ind. Code 8-1-2. Notice of the prehearing conference and the evidentiary settlement hearing was published in accordance with applicable law. The Commission has jurisdiction over the subject matter of this proceeding under Ind. Code § 8-1.5-3 and applicable provisions of § Ind. Code 8-1-2.

2. **Petitioner's Characteristics.** Petitioner is a municipality that owns and operates a water treatment plant and other facilities used for the production, transmission, delivery, and furnishing of potable water to the public within and around the City of Boonville, Indiana. It currently serves approximately 3,700 water utility customers. The main components of Petitioner's existing system include: four raw water wells, one 2.16 million gallon per day (MGD) water treatment plant, three elevated water storage tanks, two finished water booster stations, one raw water booster station, and over fifty miles of mostly 2-inch through 10-inch water mains. (Petitioner's IURC Exhibits 1 and 3 in the Main Docket.) Petitioner's existing

¹ Petitioner's April 3, 2009 posthearing response attempts to include additional testimony after the record has closed, without seeking to reopen the record under 170 IAC 1-1.1-22. Accordingly, we have not considered Petitioner's April 3, 2009 response. Intervenor's Motion to Dismiss, faxed to the Commission's offices on April 6, 2009, has not been filed with the Commission. The Commission does not accept filing by facsimile, and Intervenor's filing was made outside of the posthearing schedule agreed to at the April 1, 2009 hearing. Moreover, Intervenor raises new objections to the proposed Settlement Agreement for the first time in its April 6, 2009 motion, and we consider those arguments untimely, and therefore waived.

schedule of water rates and charges was approved by the Commission on December 10, 2008, in Cause No. 43477.

3. **Test Year.** Due to the limited nature and number of issues the Commission ordered Petitioner to address in this Subdocket, no change was required or proposed to the Test Year approved in the Main Docket of this proceeding.

4. **Relief Requested in Petitioner's Case-in-Chief.** Petitioner has requested authority to issue waterworks revenue bonds to: (a) finance a tank painting project originally proposed in the Main Docket; (b) finance one of three proposed capital improvement projects outlined in Petitioner's case-in-chief for this Subdocket; and (c) increase its rates and charges to recover additional statutory revenue requirements needed to fund one of the three proposed capital improvement projects, to be selected and approved by the Commission. (Petitioner's Testimony of John M. Seever, Accounting Report, p. 3, in this Subdocket.)

5. **Capital Improvement Options Proposed in Petitioner's Case-in-Chief.** The Capital Improvement Options proposed in Petitioner's Case-in-Chief are as follows:

A. **Projects to be Financed Through Issuance of Bonds**

In the Subdocket Testimony of John M. Seever, C.P.A., filed on January 15, 2009, Petitioner requested authority to issue water works revenue bonds to finance the replacement and/or rehabilitation of Petitioner's existing 2.16 MGD water treatment plant and to re-paint Petitioner's existing 500,000 gallon elevated water storage tank near the hospital (also referred to as the "South Tower"). The specifics of those projects were described in detail in the Prefiled Direct Examination Testimony of David L. Dahl of Midwestern Engineers, Inc., which included the Supplemental Preliminary Engineering Report for Water System Improvements for the City of Boonville, Warrick County, Indiana, that Midwestern Engineers, Inc. prepared in January of 2009 for use in this Subdocket (referred to herein as the "Supplemental PER").

I. **Water Treatment Plant Rehabilitation Project**

- a. Connect the existing plant to the new raw water main by construction of approximately 2,000 linear feet of new 18" main to replace the old 14" main.
- b. Connect the existing plant to the distribution system with the construction of approximately 2,900 linear feet of new 18" main to replace the old deteriorating 12" main.
- c. Install two (2) new 1,000 gpm pressure filters with new piping and pumps to replace the existing four (4) 1976 filters. These will be installed to the west of the existing plant with a 15-foot addition constructed to the plant building. The addition will house filter face piping, new high service and backwash pumps and piping, and a new Motor Control Center. Once constructed, and placed into operation they will be piped to the two 1991 filters and the existing clearwell.
- d. The two (2) 1991 filters would be renovated by repairing, repainting and replacing the media and valves, and de-rated to 3.0 gpm/sf or 235 gpm each.

- e. Demolition and removal of the 1976 filters, piping, high service pumps and Motor Control Center.
- f. Remodel the area formerly housing the 1976 filters to accommodate chemical feed equipment and storage in accordance with Ten States Standards. The chlorine equipment upgrade will include scrubbers in the event of a leak.
- g. Repoint the building and replace the doors and windows.
- h. Upgrade the lab.
- i. Upgrade HVAC with dehumidification.
- j. Replace the SCADA system.
- k. Install a standby generator.
- l. Properly fence site for security.

II. Re-Paint Existing Water Storage Tank (the "South Tower")

- a. Re-paint the existing 500,000 gallon elevated water storage tank.

B. Improvements To be Funded Without Bonds.

Although not proposed to be funded through the water works revenue bond issuance for which Commission approval is sought in this Subdocket, Petitioner identified the following additional system improvements required to bring its existing water treatment plant and other facilities into compliance with today's standards:

I. Additional Well Field Improvements

- a. Install new pumps and motors in the existing wells – This is required so that the wells can pump directly to the existing water treatment plant by-passing the raw water clear well and booster station. Therefore, this clearwell and booster station can be abandoned.
- b. Install new meters in the existing wells.
- c. Install new piping in the existing well field – Pumping directly to the existing water treatment plant will increase the pressure on the 30 year old mains in the well field. Therefore, these mains will be replaced from near the county road to each individual well.
- d. Install new generator and electrical in the well field.
- e. Abandon old well field.

II. Additional Water Treatment Plant Improvements

- a. Construct a new 720,000 gallon clear well and associated piping – The tank that was designed for the new plant will be built at the existing plant site. (The relocation is subject to soil borings and depending on the soil conditions may increase the cost.)
- b. Construct new back wash tanks and lift station – Currently the discharge water from the filter backwashing is discharged to a city lake without a valid NPDES permit. The clear water from the new tanks will be recycled through the plant and the solids will be discharged back into the sewer system.
- c. Construct a detention tank and aerator – The addition of detention and aeration will improve the plant's manganese removal efficiency

and decrease the amount of potassium permanganate that is currently being used.

C. Capital Improvement Project Options Considered. Three different project options were presented as possible ways to achieve Petitioner's capital improvement goals. (Petitioner's Supplemental PER, Ex. DLD-1, Subdocket). Those project options include:

OPTION 1 - Estimated Project Cost = \$8,500,000
Rehabilitation of existing 2.16 MGD water treatment plant.

OPTION 2 - Estimated Project Cost = \$7,600,000
New 4.32 MGD water treatment plant per original request.

OPTION 3 - Estimated Project Cost = \$7,100,000
New 2.88 MGD water treatment plant.

Petitioner proposed to finance all but \$3,585,000 of each of the above project cost estimates through a proposed bond issuance under the Indiana Drinking Water State Revolving Fund (SRF) Loan Program, requiring an additional across-the-board rate increase in this Subdocket to finance debt service and debt service reserve funding requirements for Petitioner's 2009 SRF bond issuance.

6. Terms of Proposed Settlement Agreement. On March 26, 2009, Petitioner and the OUCC filed a proposed Settlement Agreement for approval by this Commission. The proposed Settlement Agreement was supported by the prefiled testimony of Petitioner's accounting witness, John M. Seever, and OUCC witnesses Harold L. Rees, Edward R. Kaufman and Richard J. Corey. The settlement testimonies of Mr. Seever and Mr. Corey included accounting schedules that reflect agreed changes to the revenue requirements approved in the Main Docket of this Cause. Following is a summary of the proposed Settlement Agreement and supporting testimony.

A. Agreed Capital Improvement Project and Approval of Proposed Financing. The Settling Parties agreed that the Commission should accept and approve Petitioner's proposed Project Option 3, which includes a new 2.88 MGD Water Treatment Plant to be located on property owned by Petitioner, located near its raw water booster station in an unincorporated part of Warrick County, Indiana. Project Option 3 also calls for Petitioner to repaint the elevated water storage tank known as the South Tower at a higher cost than originally proposed in the Main Docket. The projected cost of removing newly discovered lead paint increased the cost of repainting the South Tower to approximately \$400,000, which includes a \$30,000 contingency.

The Settlement Testimony of OUCC Witness Harold L. Rees explained each of Petitioner's three proposed Project Options, comparing relative benefits and relative costs. Project Option 1 covered capital improvements the Commission ordered Petitioner to investigate when it issued its December 10, 2008 Order in the Main Docket of this Cause. Petitioner presented evidence that the plant rehabilitation and repairs outlined by the Commission would require additional system improvements to be made in order to comply with applicable

environmental, engineering and/or safety standards. Those additional costs made the rehabilitation option less favorable from an economic standpoint when compared with the other Project Options.

Construction Project Options 2 and 3 called for a new water utility treatment plant to be built at a new site located closer to Petitioner's raw water wells. Project Options 2 and 3 both offered greater capacity than Petitioner's existing system, with newer, more efficient technology than used in Petitioner's existing treatment plant. Project Option 2 provided fifty percent more treatment capacity than that provided under Option 3, at an additional project cost of approximately \$500,000. However, the smaller capacity provided under Option 3 is more than sufficient to meet Petitioner's projected future demand, possibly for decades to come. In settlement, Petitioner and the OUCC agreed that Project Option 3 was the option that would best serve the interests and needs of Petitioner and its customers, especially in light of Petitioner's revised funding plans, which reduced the principal amount of the planned bond issuance to approximately one-half of the total cost of the planned improvements, with the other half funded with cash-on-hand and/or Economic Development Income Tax ("EDIT") bonds, to reduce the rate impact of needed system improvements.

Based on the evidence of record, we find that Petitioner's Project Option 3 is reasonable and necessary to enable Petitioner to continue to render adequate and efficient water utility service to its customers. We also find that the proposed bond issue is a reasonable method of financing the unfunded portion of Project Option 3. We therefore authorize and approve Petitioner's request to issue waterworks revenue bonds in an aggregate amount not to exceed \$3,515,000, to be used to construct and implement Project Option 3. The Settling Parties also agreed that if there is any delay between Petitioner implementing the agreed and authorized rate increase and Petitioner closing on its SRF loan, any funds collected in rates for Debt Service on the new loan prior to the loan closing date are to be placed in a segregated fund and used to reduce the principal amount Petitioner borrows to fund the agreed capital improvement project.

B. Agreed Annual Revenue Requirements. Indiana Code § 8-1.5-3-8 establishes the revenue requirement elements which this Commission must apply in determining just and reasonable rates for municipally-owned utilities, such as Petitioner's water utility. The Commission approved a total annual net revenue requirement of \$1,617,832 in the Main Docket of this Cause. The Settling Parties have agreed to the following changes in the revenue requirement elements approved in the Main Docket, for a total additional agreed increase in revenue from rates and charges of \$309,830, representing a 19.15% across-the-board increase in revenue from the rates and charges previously approved in Cause 43477:

<u>Revenue Requirements</u>	<u>Main Docket</u>	<u>Subdocket</u>
Operation and Maintenance Expenses	\$1,037,369	\$1,037,369
Working Capital	0	35,504
Debt Service on 2006 Bonds	331,905	331,905
Debt Service on 2009 Bonds	0	236,263
Debt Service Reserve on 2006 Bonds (through 12/09)	68,055	68,055
Debt Service Reserve on 2009 Bonds	0	33,725
Extensions & Replacements (Depreciation)	183,766	183,766
Utility Receipts Taxes	<u>23,378</u>	<u>23,378</u>
Total Revenue Requirement	\$1,644,473	\$1,949,965
Less: Interest income	(2,342)	(2,342)
Other Revenue	<u>(24,299)</u>	<u>(24,299)</u>
Net Revenue Requirements:	<u>\$1,617,832</u>	<u>\$1,923,324</u>
Net Revenue Increase Required:		\$305,492
Divided By: Revenue Conversion Factor:		0.986
 Agreed Revenue Increase:		 \$309,830
 Percentage Increase		 <u>19.15%</u>

The agreed increase in revenue requirements and required increase in revenue from rates is further explained in the proposed Settlement Agreement and the Settling Parties' supporting testimony filed in this Subdocket on March 26, 2009. The revenue requirement elements proposed in settlement in this Subdocket include new annual debt service and debt service reserve required under Petitioner's proposed SRF loan, based on a principal amount of \$3,515,000, with a 20-year repayment period, at an assumed annual interest rate of 3%. However, if there is any delay between Petitioner implementing the agreed and authorized rate increase and Petitioner closing on its SRF loan, the Settling Parties agreed that any funds collected in rates for Debt Service prior to the loan closing date would be placed in a dedicated account to be used to reduce the principal amount Petitioner borrows to fund capital improvement Project Option 3.

The Settling Parties also agreed that the calculation of Petitioner's Debt Service Reserve ("DSR") should be based on the actual balance in Petitioner's DSR account, which is currently \$293,401, to compute Petitioner's future DSR funding needs. The Settling Parties agreed that all of the funds in Petitioner's current Debt Service Reserve should be applied to its existing loans. The 2006 Debt Service Reserve will be fully funded by the end of 2009, triggering a second true-up requirement (discussed below).

The Settling Parties agreed that as soon as the new rates approved in this Subdocket are in place, Petitioner will begin funding its new Debt Service Reserve requirement. Even if Petitioner has not closed on its loan, if it receives money through rates to fund Debt Service Reserve on the new SRF loan, as part of the settlement, the Petitioner agrees to restrict the use of those funds for purposes of funding Debt Service Reserve, i.e., by depositing the funds into a dedicated or restricted Debt Service Reserve account to be held until the last payment is made on Petitioner's authorized debt. If Petitioner uses any funds from the Debt Service Reserve for any unauthorized purposes, i.e., purposes other than retiring one of its bonds, Petitioner agreed to promptly inform both the IURC and the OUCC of that use and to promptly provide any

additional documentation or information requested by the OUCC or required by this Commission.

In exchange for Petitioner's commitments under the proposed settlement, the OUCC agreed that Petitioner's current cash position justified a need for Working Capital, even though Petitioner had not requested an allowance for Working Capital in the revenue requirements proposed in the Main Docket of this proceeding. The Settling Parties agreed that more immediate relief was needed, and agreed to an annual allowance for Working Capital of \$35,504, as discussed in the Settlement Testimony of OUCC Witness Edward R. Kaufman.

C. **Other Agreed Conditions in Proposed Settlement Agreement.** In consideration of the OUCC's commitments under the proposed Settlement Agreement, Petitioner agreed to the following additional terms and conditions of settlement:

(i) **Agreed Method of Funding Tank Painting Costs for the South Tower.** Since Petitioner plans to finance its 2009 tank painting project costs for the South Tower through the debt issuance approved in this Order, Petitioner agreed that, in the future, it will finance future painting of the South Tower using debt. That approach allows Petitioner to recover future tank painting costs for the South Tower through Debt Service in this and in future rate cases, in a manner aimed at preventing a single generation of customers from having to simultaneously pay for future and past painting of the South Tower that would have been the impact of an annual tank painting amortization used to accumulate sufficient funds over a period of at least 15 years to pay for the next painting of the South Tower, while at the same time paying debt service on loan(s) used to fund the current tank painting project. Requiring the cost of future painting of the South Tower to be financed through debt will help ensure that Petitioner's customers are only required to pay for one 15-year round of tank painting for the South Tower at any point in time.

(ii) **Restricted or Dedicated Accounts for Annual Tank Painting Amortization.** For elevated water storage tanks other than Petitioner's South Tower (the painting of which is being financed in this Subdocket, to be funded through future debt service payments), Petitioner agreed to accumulate funds collected through rates for future tank painting projects based on a 15-year amortization period. Petitioner agreed to place all monies collected through rates for future tank painting in a dedicated or restricted account, to be used only as needed for future tank maintenance. However, the Settlement Agreement provides that, in the event of future periods of financial distress, Petitioner may use restricted tank painting funds to meet its debt service requirements, if needed. In that case, Petitioner must promptly advise the Commission and the OUCC that it has used funds from its tank painting reserve to make debt service payments and promptly provide any further documentation the OUCC requests or the Commission requires.

(iii) **True-Up Requirements.** In settlement, Petitioner agreed to a "true-up" process, to be implemented after Petitioner closes on its SRF loan. The true-up process will be used to address any differences between estimated and actual project costs or estimated and actual debt service and debt service reserve requirements.

(a) **First Required True-Up – Within 30 Days of Loan Closing.** The actual amount of the bonds, the interest rate at which the bonds will be sold, and the cost of annual debt service associated with the Project Option 3 will not be known precisely until Petitioner sells the bonds required to fund the project. Since the figures

used in the above debt service and debt service reserve calculations are estimates, rather than actual amounts, Petitioner agreed to true-up those amounts after closing on its SRF loan.

We find that Petitioner should comply with the following true-up filing requirements. Within 30 days of closing on the 2009 SRF loan, Petitioner must file a true-up report with the Commission and serve a copy on the OUCC. The true-up report is to include the actual principal amount borrowed, the actual interest rate, the term of the bonds, a bond amortization schedule, the actual average annual debt service and debt service reserve funding requirements, and the impact that any difference between the actual and projected revenue requirements for debt service and debt service reserve would have on Petitioner's end user rates. Petitioner's true-up filing should also include an amended tariff giving prospective effect to the actual average annual debt service and debt service reserve requirements, based on the information in the true-up report. If the OUCC objects to the calculations in the true-up report and amended tariff, it has 30 days after filing with the Commission in which to file any objections and request an expedited evidentiary hearing on those objections. If the OUCC does not file an objection within 30 days of Petitioner's true-up filing, Petitioner's true-up report and amended tariff will be processed by the Commission's Water/Sewer Division without a hearing. Upon approval by the Water/Sewer Division, the proposed tariff shall cancel all prior rates and charges.

(b) **Second True-Up Filing in December, 2009.** The second true-up filing required under the Settlement Agreement relates to the debt service reserve requirement on Petitioner's 2006 bonds, which will be fully funded before the end of 2009. The Settlement Agreement requires Petitioner's annual revenue requirement for debt service reserve and associated end-user rates to be true-up (through a downward adjustment) at that time. An agreed downward adjustment of \$68,055 to debt service reserve, together with a corresponding decrease in end user rates, will prevent the Petitioner from over-collecting \$68,055 per year in rates -- the amount currently built into rates for debt service reserve on Petitioner's 2006 bonds during the remaining life of the rates approved herein.

Filing requirements and procedures for the second true-up shall be the same as those used in the initial true-up in sub-paragraph (a.) above.

(c) **Possible Third True-Up Filing -- One Year Before Delayed Principal Payments Begin.** An additional true-up filing could be required if the 2009 SRF loan requires interest-only payments during the first two years. If no principal payments are required until the end of the second year, the Settling Parties agreed that Petitioner's debt service revenue requirement and end user rates would be lowered during the first year of the loan to reflect the absence of any principal payments required during that time. The Parties also agreed that Petitioner's rates would increase at the end of the first year, so that funds needed to make higher debt service payments at the end of Year 2 (including a principal component) can be accumulated through monthly service payments collected throughout the second year of the SRF loan.

The filing requirements and procedures for the third true-up shall be the same as those used in the initial true-up in sub-paragraph (a) above.

(iv) **Agreed Steps to Reduce Unaccounted-for Water.** To reduce unaccounted-for water to a more reasonable level (ideally 15% or less), Petitioner agreed to file in this Subdocket monthly lost water reports starting 60 days after the new treatment plant is placed into service, covering the first 30 days of operation. The agreed monthly reporting requirement for unaccounted-for water will continue until Petitioner's unaccounted-for water falls below 20%. Thereafter, two (2) consecutive semi-annual reports will be required to report unaccounted-for water during each of the six (6) months preceding the month in which the report is filed. If the above reports do not demonstrate reasonable progress being made to reduce Petitioner's unaccounted-for water, the OUCC may seek further relief from the Commission.

Based on the evidence of record, we find that the above agreements are reasonable and just, that they serve the public interest and shall be approved, as modified.

7. **Approval of Stipulation and Settlement Agreement.** In our order in Cause 43477, the Commission expressed its concerns about the proposed relief requested based on the lack of evidence supporting a determination that a new treatment plant was necessary, and evidence that the proposed treatment plant was oversized given Petitioner's customer base and historical growth. In this SubDocket, Petitioner has presented additional supporting evidence for us to find that a new treatment plant is necessary. Further, Petitioner and the OUCC present a smaller treatment plant option that better relates to the current needs of the utility, and is more cost-efficient for Petitioner's customers.

Based on the evidence, we find that the Parties' Stipulation and Settlement Agreement shall be approved. A copy of the Stipulation and Settlement Agreement is attached to this Order and incorporated herein by reference. With regard to future citation of this Order, we find that our approval herein should be construed in a manner consistent with our findings in *Richmond Power & Light*, Cause No. 40434 (IURC 3/19/97).

8. **Charges pursuant to Ind. Code 8-1-2-70.** In our December 10, 2008 Order in Cause 43477, the Commission assessed charges pursuant to Indiana Code 8-1-2-70 in the amount of \$20,050.27. Pursuant to GAO 2009-3, approved on March 11, 2009, such charges would be limited for utilities with less than 5,000 customers, such as Boonville. While GAO 2009-3 was not effective at the time of our Order in Cause No. 43477, the Commission is cognizant of the effect such charges may have on smaller utilities. Accordingly, the charges previously assessed in Cause No. 43477 shall be modified in accordance with GAO 2009-3 and assessed as set forth in Ordering Para. No. 5.

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

1. Petitioner is hereby authorized to commence and complete the capital improvement and tank painting projects included in Project Option 3, as discussed and approved in this Order.

2. Petitioner is hereby authorized to increase its annual revenue from rates and charges as previously approved in the Main Docket of this Cause by \$309,830, or 19.15%, to produce total annual net operating revenue from rates and charges of \$1,927,662, subject to the true-up provisions in Finding Paragraph 6-C(iii).

3. Petitioner shall be and is hereby authorized to issue waterworks revenue bonds in an aggregate principal amount of up to \$3,515,000, subject to the true-up provisions in Finding Paragraph 6-C(iii)(a) and (c).

4. The Stipulation and Settlement Agreement shall be and hereby is approved, and Petitioner shall be and hereby is required to fulfill its obligations thereunder, as further discussed in Finding Paragraph 6 of this Order.

5. In accordance with Ind. Code 8-1-2-70 and GAO 2009-03, Petitioner shall pay the following itemized charges to the Secretary of the Commission within twenty (20) days from the date of this Order:

Commission Charges	\$1,000.00
Reporting Charges	\$ 17.39
Legal Advertising Charges	\$ 79.78
Utility Consumer Charges	<u>\$2,000.00</u>
TOTAL:	\$3,097.17

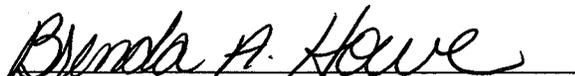
6. In accordance with Ind. Code § 8-1-2-85, Petitioner shall pay a fee of twenty-five cents (\$0.25) for each \$100.00 of waterworks revenue bonds issued into the Treasury of the State of Indiana, through the Secretary of the Commission, within thirty (30) days of the receipt of the financing proceeds authorized herein.

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

HARDY, GOLC, LANDIS, SERVER, AND ZIEGNER CONCUR:

APPROVED: APR 08 2009

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


Brenda A. Howe
Secretary to the Commission

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STATE OF INDIANA

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INDIANA UTILITY REGULATORY COMMISSION

MAR 26 2009

INDIANA UTILITY
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IN RE PETITION OF THE CITY OF)
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Cause No. 43477-S1

STIPULATION AND SETTLEMENT AGREEMENT

This Stipulation and Settlement Agreement (the "Settlement Agreement") is entered into by and between the Petitioner, City of Boonville, Indiana ("Boonville" or "Petitioner") and the Indiana Office of Utility Consumer Counselor (the "OUCC") (collectively, the "Settling Parties"). The Petitioner and the OUCC have been duly advised in the premises by their respective staff, experts, and counsel; and they each now hereby stipulate and agree, solely for the purpose of compromise and settlement, that the terms and conditions incorporated in this Settlement Agreement and in a Joint Proposed Order to be filed in this Sub-Docket for adoption by the Commission as its Final Order in this Sub-Docket, constitute a fair, reasonable and just resolution of all issues in this proceeding, subject to their approval by the Indiana Utility Regulatory Commission (the "Commission" or "IURC"), without modification or further condition that is unacceptable to any Party.

1. The Settling Parties jointly stipulate that all testimony and exhibits pre-filed in this cause be admitted into evidence without further hearing, procedure, or cross-examination; and each of the Settling Parties hereby waives its right to cross-examination

or to present further evidence of any kind or nature other than evidence filed or submitted in support of this Settlement Agreement.

2. The Settling Parties stipulate and agree that the Commission should accept and approve the agreed new 2.88 MGD Water Treatment Plant proposed by the Petitioner in this Sub-Docket as Project Option 3, and grant the agreed 19.15% rate increase, as shown in the Accounting Schedules attached to OUCC Witness Corey's Settlement Testimony.

Despite several unknown factors concerning the proposed SRF loan, the Petitioner and the OUCC agree to use the following figures to set rates for purposes of this settlement, subject to later true-up(s). The Settling Parties agree to include a new Debt Service revenue requirement of approximately \$236,263 for the proposed SRF loan. That figure is based on an assumed interest rate of 3.0% on a 20-year loan in the principal amount of \$3.515 million. After adding that additional \$236,263 to Petitioner's current average annual Debt Service of \$331,905,¹ the Settling Parties agree on a *pro forma* total annual Debt Service revenue requirement of \$568,168.

Since the timing and amount of future loan payments will remain uncertain until several future conditions are known, the Petitioner agrees that if there is any delay between Petitioner implementing the agreed and authorized rate increase and closing on its SRF loan, any funds collected in rates for Debt Service on the new loan prior to the loan closing date will be placed in a segregated fund and used to reduce the principal amount Petitioner has to borrow to fund agreed capital improvement projects.

¹ This figure is taken from p. 40 of the Direct Testimony of Petitioner's Witness John M. Seever in the main Docket of this Cause.

The Settling Parties also agree to future true-up reporting and tariff filing requirements. Since multiple future true-ups could be required, depending on the terms and conditions of Petitioner's proposed SRF loan, the Settling Parties agree that rate relief approved in this Sub-Docket could be implemented in phases, subject to later upward and/or downward adjustments using the agreed true-up process.

Petitioner's original Sub-Docket filing assumes a beginning balance of \$130,439 in its Debt Service Reserve account. However, the information the Petitioner provided in ERK Attachment 1 shows that Petitioner's Debt Service Reserve has a current balance of \$293,401. The revenue requirement to fund Petitioner's Debt Service Reserve should be based on the actual current balance in its Debt Service Reserve account. Thus, the Settling Parties agree that the starting balance to be used in calculating Petitioner's additional annual revenue requirement for Debt Service Reserve is \$293,401, subject to later true-up.

In exchange for petitioner's acceptance of the above beginning balance, the OUCC agrees that Petitioner should receive additional revenue through rates for working capital to address concerns regarding the adequacy of Petitioner's cash on hand. The Petitioner did not request Working Capital in the main Docket of this proceeding. Petitioner may have intended to use excess funds previously collected as Debt Service Reserve to meet its immediate cash operating needs. The OUCC believes it would be inappropriate to use funds collected for Debt Service Reserve for other purposes. Therefore the parties agree to include a \$35,504 allowance for Working Capital in Petitioner's *pro forma* revenue requirements.

The Settling Parties also agree that the rate increases agreed on in settlement should be implemented by the Petitioner after Petitioner's proposed tariff revisions are filed with and approved by the Commission's Water Division. The Settling Parties agree that the revised tariff will be subject to the true-up requirements discussed further below.

3. In consideration of the OUCC agreeing to approve the new 2.88 MGD Water Treatment Plant and agreeing to Petitioner's implementation of a 19.15% across-the-board rate increase, Petitioner agrees to meet the following additional commitments and reporting requirements under this agreement:

A. Agreed Method of Funding Tank Painting Costs for the South Tower.

Since the Petitioner is financing its 2009 tank painting project costs for the South Tower, the Petitioner and the OUCC agree that the cost of future tank painting for the South Tower should be funded in the same manner. That approach will allow Petitioner to recover future tank painting costs for the South Tower through Debt Service and Debt Service Reserve revenue requirement elements approved in this, and in future, rate cases.

B. Restricted or Dedicated Accounts for Annual Tank Painting Amortization.

For elevated water storage tanks other than Petitioner's South Tower (the painting of which is being financed in this Sub-Docket), the Petitioner agrees to accumulate funds collected through rates for future tank painting projects based on a 15-year amortization period. In settlement, Petitioner agrees to place all monies collected through rates for future tank painting in a dedicated or restricted account, to be used only as needed for future

tank maintenance. However, the Settling Parties also agree that, in the event of future periods of financial distress, the Petitioner may use restricted tank painting funds to meet its debt service requirements, if needed. In that case, Petitioner agrees to promptly advise the Commission and the OUCC that it has used funds from its tank painting reserve to make debt service payments. Petitioner also agrees to promptly provide any further documentation that might be requested at that time by the OUCC or required by the Commission.

- C. True-Up Requirements. Petitioner agrees to a “true-up” process, to be implemented after Petitioner closes on the Indiana Drinking Water State Revolving Fund (SRF) Loan to address any differences between projected and actual project costs or projected and actual debt service and debt service reserve requirements after Petitioner closes on the SRF loan. Under the proposed settlement, Petitioner’s initial true-up report should be filed with the IURC, and a copy served on the OUCC, within 30 days of the loan closing date. The true-up report must state the actual interest rate and principal amount borrowed, along with an updated amortization schedule.

Since Petitioner’s previously-issued debt should be fully funded by the end of 2009, the Petitioner agrees that its revenue requirement and rates also should be trued-up at that time. Otherwise, the Petitioner would continue to over collect more than \$68,055 per year until its next rate case is decided.

To that end, the Petitioner and the OUCC agree that the calculation of Petitioner's Debt Service Reserve should be based on the actual balance of \$293,401, as shown in Attachment No. 1.

The Settling Parties also agree that all of the funds in Petitioner's current Debt Service Reserve should be applied to its existing loans. Thus, the 2006 Debt Service Reserve could be considered fully funded by the end of 2009. The following table shows when and how much Petitioner needs to fund Debt Service Reserve on its existing and proposed loans:

Projected Accumulation of Funds for Debt Service Reserve

<u>Calendar Year</u>	<u>2006 Revenue Bonds</u>	<u>Proposed 2008 Bonds</u>	<u>Total Annual Deposits</u>	<u>2.00% Interest Earnings</u>	<u>DSR Balance</u>
Beginning Balance					\$293,401
2009	\$62,384 ²	\$16,863	\$79,246	\$5,868	\$378,515
2010		\$33,725	\$33,725	\$7,570	\$419,811
2011		\$33,725	\$33,725	\$8,396	\$461,932
2012		\$33,725	\$33,725	\$9,239	\$504,895
2013		\$33,725	\$33,725	\$10,098	\$548,718
2014		\$16,863	\$16,863	\$10,974	\$576,555
	<u>\$62,384</u>	<u>\$168,625</u>	<u>\$231,009</u>	<u>\$52,145</u>	

Petitioner needs to accumulate \$576,538 within five years to fully fund its Debt Service Reserve. An annual Debt Service Reserve of \$33,725,

² This figure represents 11 months of the \$68,055 annual debt service reserve on Petitioner's 2006 loan.

combined with Petitioner's current Debt Service Reserve fund balance of \$293,401 will provide sufficient funds for Petitioner to meet that requirement within five (5) years.

The above analysis assumes Petitioner's rates approved in this Sub-Docket will go into effect by July 2009. Under that schedule, Petitioner could collect 6 months of Debt Service Reserve on its proposed debt in 2009 and 6 months in 2014. If rates do not go into effect by July 2009, then the amount collected in 2009 would be reduced, but the amount collected in 2014 would be increased by the same amount. Since the Debt Service Reserve for the 2006 bonds is already included in Petitioner's current rates, the timing of an order in this cause will not affect the Debt Service Reserve for Petitioner's 2006 bonds.

As soon as rates are in place, Petitioner agrees to begin funding its Debt Service Reserve. Even if Petitioner has not closed on its loan, if it receives money to fund Debt Service Reserve on the new SRF loan, as part of this settlement, Petitioner agrees to restrict the use of those funds for that purpose (*i.e.*, depositing them into a dedicated or restricted Debt Service Reserve account).

If Petitioner uses any funds from Debt Service Reserve for unauthorized purposes (*i.e.*, for purposes other than retiring one of its bonds), Petitioner agrees to promptly inform both the IURC and the OUCC that it has used funds from its Debt Service Reserve for a different

purpose and to promptly provide whatever additional documentation or information is requested by the OUCC or required by the IURC at that time.

D. Agreed Steps to Reduce Unaccounted-for Water. In order to reduce unaccounted-for water to a more reasonable level (ideally 15% or less); Petitioner agrees to make the following compliance filings in this Sub-Docket. Petitioner agrees to file monthly lost water reports in this Sub-Docket starting 60 days after the new treatment plant is placed into service, and covering the first 30 days of operation. The agreed monthly reporting requirement for unaccounted-for water will continue until Petitioner's unaccounted-for water falls below 20%. Thereafter, two (2) consecutive semi-annual reports will be required, to report unaccounted-for water during each of the six (6) months proceeding the month in which the report is filed. If the above reports do not demonstrate reasonable progress being made to reduce Petitioner's unaccounted-for water, the OUCC may seek further relief from the Commission.

4. At the final evidentiary hearing, the Settling Parties will confirm their request that the Commission approve this Settlement Agreement, and all pre-filed evidence will be admitted into the evidentiary record without cross-examination.

5. The Settling Parties agree that the pre-filed testimony and exhibits, along with any testimony in support of this Settlement Agreement presented at the noticed public hearing, provide and constitute substantial and sufficient probative evidence (170

IAC 1-1.1-17(d)) upon which the Commission can and should determine that the Settlement Agreement is reasonable, just and consistent with the purpose of Indiana Code 8-1.5-3-1, *et seq.*, and, where applicable, Ind. Code 8-1-2-1, *et seq.*; that the Settlement Agreement serves the public interest; and that upon approval of this Settlement Agreement by the Commission's adoption of the Settling Parties' Joint Proposed Order, without any material change not accepted in writing by each of the Settling Parties, this proceeding will be finally decided and resolved, without any remaining right of appeal, modification or rehearing, unless otherwise agreed by the Settling Parties, subject to agreed true-up requirements.

6. This Settlement Agreement shall not constitute nor be cited as precedent, except as necessary to enforce its terms before the Commission or in any state court of competent jurisdiction. The Settlement Agreement is solely the result of compromise in the settlement process and, except as provided herein, a Joint Proposed Order to be filed by the Settling Parties for possible adoption by the Commission in this Sub-Docket, shall be without prejudice to and shall not constitute a waiver of any legal position that either of the Settling Parties may take in any other regulatory proceeding(s).

7. Each of the undersigned represent that he or she is fully authorized to execute this Settlement Agreement on behalf of their designated clients, who agree to be bound by this Settlement Agreement.

8. This Settlement Agreement is contingent upon the Commission's issuance of a Final Order approving the terms of this Settlement Agreement and adopting the Joint Proposed Order to be filed by the Settling Parties for possible adoption by the

Commission, without any material change not agreed upon in writing by each of the Settling Parties. In the event the Commission does not approve this Settlement Agreement, or approves a modified version that is not acceptable to either Settling Party, this Settlement Agreement shall be deemed null and void and withdrawn, unless otherwise agreed by the Petitioner and the OUCC.

ACCEPTED AND AGREED this 26th day of March, 2009:

CITY OF BOONVILLE, INDIANA

By:



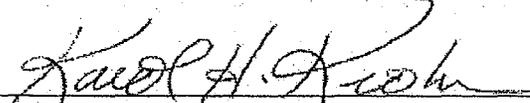
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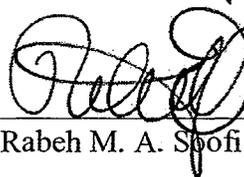


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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served electronically (via e-mail or facsimile) by agreement of the parties and via United States first class mail, postage prepaid, on counsel for the Intervenor on this 26th day of March, 2009:

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