

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

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IN THE MATTER OF THE PETITION ) CAUSE NO. 43551 U  
OF FORTVILLE MUNICIPAL )  
WATER UTILITY FOR A NEW ) FINAL ORDER  
SCHEDULE OF RATES AND )  
CHARGES ) APPROVED: OCT 07 2009

**BY THE COMMISSION:**

**Jeffrey L. Golc, Commissioner**  
**Angela Rapp Weber, Administrative Law Judge**

On August 7, 2008, Fortville Municipal Water Utility ("Fortville" or "Applicant") filed with the Indiana Utility Regulatory Commission ("Commission") its Small Utility Application for a Rate Change pursuant to Indiana Code § 8-1-2-61.5 and 170 IAC 14-1. Fortville stated that it requires an increase in its rates of 96.75% above current rates. Fortville required the increase (1) to account for increased operating expenses and (2) to provide financing for its proposed \$3.5 million Capital Improvements Program ("CIP"). The CIP consists of system improvements that include construction of a 500,000 gallon elevated tank, refurbishment of an existing 300,000 gallon tank, and various water main extensions.

On November 19, 2008, the Office of Utility Consumer Counselor ("OUCC") filed its Report in this matter, which recommended that the Commission approve an overall rate increase of 21.13%. In addition, the OUCC recommended that the Commission disapprove an increase for the financing of the proposed CIP. Rather, the OUCC suggested that approval of the CIP financing should be considered in a subsequent phase of this Cause. On March 23, 2009, the OUCC submitted to the Commission Supplemental Schedules and Exhibits, which indicated that the OUCC and Fortville agreed to an overall increase of 27.93%. The OUCC and Fortville also submitted to the Presiding Administrative Law Judge an agreed-to Proposed Order.

On April 22, 2009, the Commission issued an Interim Order in Phase I of this Cause, which authorized Applicant to increase its rates by 27.93%, or \$135,293. The Commission did not approve the CIP and an increase for financing it. Instead, the Commission found in the Interim Order that once Fortville secured financing for its CIP, it could submit to the Commission a request for approval of the CIP and the financing of it pursuant to Phase II of this Cause.

Additionally, the Commission in the Interim Order imposed upon Applicant several requirements, including the completion of a Preliminary Engineering Report ("PER"), the completion and filing of a Leak Detection Survey, the creation of a plan to test its large meters, all of which were to be filed with the Commission. Fortville filed the PER with the Commission on April 30, 2009. On August 28, 2009, Applicant filed with the Commission notification that financing for the CIP had been secured. Finally, the Leak Detection Survey and the plan to test large meters were filed on August 31, 2009, which also included Fortville's compliance with the

additional requirements contained in the Interim Order. Therefore, Fortville requested approval to issue bonds, which are not to exceed \$2.7 million, pursuant to Phase II of this Cause. Attached to that notification were Schedules supporting an additional rate increase of 18.51% to reflect the financing secured for the CIP. Thus, when the 27.93% Phase I increase is combined with Applicant's requested 18.51%, or \$114,724, Phase II across-the-board increase, the overall rate increase would be 51.62%, or \$250,017. On September 21, 2009, the OUCC submitted to the Presiding Administrative Law Judge an agreed-to Proposed Order supporting this increase.<sup>1</sup>

1. **Jurisdiction.** Applicant is a municipal water utility as defined by Indiana Code § 8-1-2-1 and a small utility as defined by 170 IAC 14-1-1(h). Fortville provides water utility service to approximately 1,730 customers in Hancock County, Indiana. Accordingly, the Commission has jurisdiction over the Applicant and the subject matter of this Cause.

2. **Relief Requested.** Applicant requested approval of a bond issuance not to exceed \$2.7 million to fund the CIP. In addition, Fortville requested an 18.51% increase in its rates over the 27.93% rate increase approved by the Commission pursuant to the Interim Order issued in Phase I of this Cause. The 18.51% increase accounts for the inclusion of financing of the CIP in Fortville's rates.

3. **Evidence Supporting the Increase.** O.W. Krohn, a Certified Public Accountant, filed on behalf of Fortville a report that explained its requested Phase II across-the-board increase of 18.51%, or \$114,724. The report explained that since the Commission's approval of Fortville's 27.93% Phase I increase, it had secured financing for its proposed CIP. Specifically, Fortville received construction bids for the CIP and then received approval for financing through the American Recovery and Reinvestment Act of 2009 ("ARRA") and the Indiana State Revolving Fund ("SRF Bonds"). The ARRA funding will be in the form of a forgivable bond anticipation note ("BAN"). The ARRA BAN will be forgiven once the CIP is complete and Fortville fulfills ARRA program requirements. The CIP is expected to cost \$2.7 million.

As a result of the ARRA and SRF financing approval, Fortville's town council adopted a Bond Ordinance, which authorized the issuance of Water Works Revenue Bonds. Applicant's report explained that the ARRA BAN will provide for 25%, or \$675,000, of the CIP. The SRF Bonds will finance the remainder of the CIP costs, which is \$2,025,000, pursuant to a twenty-year Water Works Revenue Bond. Fortville's proposed CIP costs are illustrated below:

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<sup>1</sup> Applicant's August 28, 2009 filing and the Proposed Order contained language referencing a settlement reached between Applicant and the OUCC in this matter. However, 170 IAC 1-1.1-17 provides that settlement agreements reached by the parties may be filed with the Commission and admitted into evidence. In addition, there must be probative evidence to support the settlement. In this matter, no settlement agreement was filed with the Commission, and likewise, no probative evidence was provided to support the notion that the parties in this matter reached a settlement.

<u>Project Costs:</u>	
New Water Tower & Rehab Old Tower	\$1,165,902
Water Main Extensions/Helmcrest Upgrades	858,921
Total Construction Costs (per bids)	<u>2,024,823</u>
Contingencies	202,482
Total Construction & Contingencies	<u>2,227,305</u>
Non-Construction:	
Engineering Design & Inspection	363,000
Legal, Financial & Bond Counsel	100,000
Statutory IURC Bond Fee 0.25%	6,750
Administration & Other Project Contingencies	<u>2,945</u>
Total Project Costs:	<u><u>\$2,700,000</u></u>

The Commission's Interim Order issued in Phase I on April 22, 2009 contemplated the necessity of a Phase III in this Cause. Typically, SRF permits the payment of interest only for a period of time and then the payment of both interest and principal. Phase II would include in Fortville's rates the payment of interest only. Phase III would include in rates the payment of interest and principal to the SRF.

According to Fortville's report, Phase III is not needed. Applicant explained that it currently pays debt service for 1998 revenue bonds ("1998 Bonds"), and SRF agreed to wrap principal payments on the proposed SRF Bonds around the 1998 Bonds. As a result, a rate adjustment will not be necessary once the 1998 Bonds reach maturity on January 1, 2013 because the funds that were used to pay the 1998 Bonds will be used, in part, to pay the increased principal payments on the proposed SRF Bonds. The combined annual debt payment of the 1998 Bonds and the SRF Bonds proposed to be included in rates is \$164,377. Applicant's report notes that until the 1998 Bonds are retired, its actual annual combined debt payment will be \$217,079. Applicant plans to use approximately \$50,000 from its depreciation funds to cover the difference in these two payments until the 1998 Bonds are retired. Once the 1998 Bonds are retired, Fortville proposed to implement several revenue-neutral adjustments. As a result of the wrapping of the debt and the revenue-neutral adjustments, a Phase III increase to account for principal payments is unnecessary.

4. **Commission's Findings.** With regard to Fortville's proposed CIP and its financing of the CIP detailed in its August 28, 2009 filing, subject to conditions and clarifications set forth in this Order, the Commission finds that the CIP and the financing of it should be approved. Thus, the Commission hereby authorizes Fortville to issue bonds in an amount up to \$2.7 million. The SRF Bonds are revenue bonds estimated to be \$2,025,000 and payable over twenty-years. The remaining \$675,000 of the \$2.7 million is a forgivable ARRA BAN, and effectively a grant. However, forgiveness of the ARRA BAN is contingent upon Fortville's completion of the CIP and compliance with ARRA program requirements. Accordingly, the Commission hereby finds that if the ARRA BAN is forgiven, Fortville shall inform the Commission and the OUCC within thirty (30) days of such action or determination

pursuant to a separate filing under this Cause. Similarly, if the ARRA BAN is not forgiven, Fortville shall inform the Commission and the OUCC within thirty (30) days of that determination pursuant to a separate filing under this Cause. Fortville shall also include an explanation for why the ARRA BAN was not forgiven.

This authority is granted with the following clarification. Because the ARRA “grant” is initially booked as a forgivable loan, this Order provides authority for Applicant to issue debt in the amount of up to \$2.7 million instead of \$2.025 million (\$2.7 million less \$675,000 ARRA BAN). If and when the forgivable loan becomes a grant, Applicant’s authority to borrow funds should be reduced by the amount of the grant. Thus, it will be unnecessary for Fortville to seek additional authority if the loan is not forgiven, but Fortville would also not have authority to borrow additional funds if and when the loan is forgiven and becomes a grant.

The Commission hereby finds that based on the evidence of record, with the consent of the parties, and subject to the conditions and limitations set forth herein, Fortville’s revenue requirements in Phase II should be approved, subject to true-up. As indicated, the Commission agrees with the parties that Phase III is unnecessary; Applicant’s rates and charges will not have any further adjustment under this Cause. Consistent with our findings herein, the Commission finds that Fortville’s annual revenue requirements are as follows:

<u>Revenue Requirements:</u>	<u>Phase II</u>
Operating Expenses	\$402,214
Taxes other Than Income	20,723
Depreciation Expense	61,730
Payment in Lieu of Taxes	11,072
Working Capital	31,108
Debt Service - Existing Debt	137,750
Debt Service - Proposed Debt	79,329
Debt Service Reserve - Proposed Debt	31,261
Total Revenue Requirements	<u>775,187</u>
Less: Interest Income	2,139
Add: Additional Utility Receipts Tax	1,584
Net Revenue Requirements	<u>774,632</u>
Less: Present Rate Revenues	<u>659,908</u>
Recommended Increase	<u><u>\$114,724</u></u>

The revenue requirements described above supports an across-the-board rate increase in the amount of \$114,724 or 18.51% over revenues authorized in the Interim Order. Fortville’s overall rate increase is 51.62%, or \$250,017.

Once Applicant closes on the proposed loan and completes the CIP, the final CIP cost will be known. Thus, Fortville shall file with the Commission and the OUCC a true-up report fifteen (15) days from the date of completion of the CIP. The true-up report shall include the terms of the debt, including a bond amortization schedule and Applicant’s revised revenue

requirements, which shall be based, in part, on the annual debt service of its proposed financing. As a result of the true-up, Fortville and the OUCC may agree in writing that the differences in rates are immaterial and agree that the filing of an amended tariff giving prospective effect to the actual average annual debt service and debt service reserve is unnecessary. However, the Commission still retains its ability to require Fortville to file, and subsequently approve, an amended tariff. If Applicant files an amended tariff, the OUCC shall have thirty (30) days from the date of the filing of the amended tariff to file any objections with respect to the calculation of the rates contained within such amended tariff and to request an expedited evidentiary hearing on those objections. If the OUCC does not file an objection within thirty (30) days from the date of the filing of the amended tariff and if the Commission approves of the amended tariff, Fortville's amended tariff will take effect at the start of its next billing cycle.

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

1. Consistent with the above findings, Fortville is hereby authorized to increase its rates and charges by \$114,724 annually, or 18.51%, over its rates and chargers authorized in the Interim Order for an overall rate increase of 51.62%, or \$250,017.

2. Fortville's proposed CIP is hereby approved, and Fortville is hereby authorized to incur long-term indebtedness not to exceed \$2.7 million in order to complete the CIP, subject to the requirements described above in Paragraph 4. Fifteen (15) days from the date of completion of the CIP Fortville shall file under this Cause a true-up report indicating Fortville's revised revenue requirements.

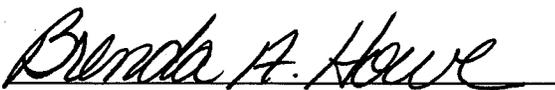
3. Fortville shall file with the Commission's Water/Sewer Division a new schedule of rates and charges as approved herein. Such new schedules of rates and charges shall be effective upon filing and approval by the Water/Sewer Division and shall apply to water usage from and after the date of approval. Once Fortville files a true-up report, the Commission may require a true-up report in accordance with Paragraph 4 above.

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

**HARDY, ATTERHOLT, GOLC, AND ZIEGNER CONCUR; LANDIS ABSENT:**

**APPROVED: OCT 07 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**