ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF SUGAR CREEK UTILITY COMPANY, INC. FOR APPROVAL OF A CHANGE IN RATES AND CHARGES AND FOR APPROVAL OF LONG-TERM FINANCING NOT TO EXCEED $500,000 TO COMPLETE AND PAY FOR NEW WATER MAIN CONSTRUCTION AND FOR AUTHORITY TO INCUR THE EXPENSE THEREOF AND TO ENTER INTO ALL NECESSARY AGREEMENTS THEREFOR	)	**CAUSE NO. 43579** **APPROVED:** SEP 08 2010

BY THE COMMISSION:
David E. Zeigner, Commissioner
Angela Rapp Weber, Administrative Law Judge

On July 21, 2010, Sugar Creek Utility Company, Inc. ("Sugar Creek" or "Petitioner") filed its Verified Motion for Authorization to Incur Additional Indebtedness for Previously Allowed Project. Sugar Creek requested expedited authority to incur additional long-term debt not to exceed $381,000 that will be used to complete and pay for the water main construction project ("Project") previously approved in the December 22, 2009 Order in this Cause. Sugar Creek also requested authority to adjust rates after the Project's completion to reflect the actual amount of borrowing. The additional borrowing includes a forgivable loan, which will operate as a grant, from the Indiana State Revolving Loan Fund Program ("SRF") that will be used to complete the Project and that will pay, on behalf of the Riley Village customers, the cost to install individual service lines. Attached to Sugar Creek's Verified Motion was the direct prefiled testimony and exhibits of Sugar Creek's accountant, Patrick Callahan.

On July 22, 2010, Petitioner filed its Motion to Reopen the Record and Establish an Agreed-Upon Procedural Schedule, which the Presiding Officers granted pursuant to a Docket Entry dated July 29, 2010. Sugar Creek filed Supplemental Exhibit 6 on August 4, 2010. Pursuant to the agreed-upon procedural schedule, the Indiana Office of Utility Consumer Counselor ("OUCC") prefiled its supplemental testimony on August 6, 2010. On August 13, 2010, Sugar Creek filed the supplemental testimony of Patrick Callahan.

Pursuant to notice published as required by law, proof of which was incorporated into the record by reference and placed in the official files of the Commission, the Commission held an Evidentiary Hearing in this Cause on August 17, 2010 at 9:30 a.m. in Room 224, 101 West Washington Street, Indianapolis, Indiana 46204. Petitioner and the OUCC appeared and participated at the Hearing, but no member of the general public appeared or attempted to participate.

The Commission, having examined and considered all of the evidence of record and now being fully advised, finds as follows:

1. **Notice and Jurisdiction.** Due, legal and timely notice of the Evidentiary Hearing conducted in this Cause was provided as required by law. Sugar Creek is a "public utility" as that term is defined under Ind. Code 8-1-2-l(a). Sugar Creek is a for-profit corporation, which owns and operates both water and wastewater utilities providing service to its customers, which includes the residents of Riley Village and the utility's affiliate campground, Heartland Resort ("Heartland"). Accordingly, this Commission has jurisdiction over the parties and the subject matter of this proceeding.

2. **Background**. In the December 22, 2009 Order, the Commission authorized Sugar Creek to proceed with the Project that will install a new water main line with individual service laterals and shut-off valves to each customer in the Riley Village subdivision. In order to complete the Project, the Commission approved Sugar Creek's request for long-term financing for the Project in an amount not to exceed $250,000. Because some Riley Village customers may have been unable to pay up-front for the estimated $1,500 cost of the installation the service line, the Commission encouraged Sugar Creek to seek a bank loan to cover the costs for the installation of service lines for those Riley Village customers who elect not to pay for the installation up-front. Those customers could make monthly payments to Sugar Creek to repay installation costs over the terms of the loan and at the interest rate charged by the bank. Sugar Creek offered evidence that the cost of the Project require authority to borrow up to $631,000 (for an additional $381,000) of which $367,000 represents a forgivable loan (or grant) from the SRF that will be used to pay for a portion of the Project, to install the service line to each premises for customers who convey easements to Sugar Creek, and to buy down Sugar Creek's rates to $45 per month.

3. **Evidence of the Parties.**

A. ***Sugar Creek's Direct Testimony.*** Patrick Callahan testified in support of the requested relief on Sugar Creek's behalf. Mr. Callahan is an independent Certified Public Accountant, is familiar with the books, records, and operations of Sugar Creek, and testified on behalf of Sugar Creek previously in this proceeding. Mr. Callahan testified that the amount of additional borrowing authority requested by Sugar Creek to complete the Project and install service laterals to each residence in Riley Village is estimated to be $381,000, subject to a true-up to reflect actual borrowing and interest rates. He stated that the total amount to be borrowed for the Project, including all soft costs, is $631,000. Mr. Callahan described the estimated costs associated with the Project as follows:

EXPENSE DESCRIPTION	**AMOUNT**
Construction	$185,000
Engineering	$ 67,500
Legal	$ 87,000
Accounting	$ 14,500
Gross-Up for Federal & State Income Tax	$136,000
SRF Fee	$ 15,000
Service Lateral Cost ($1,500 per EDU x 84 EDUs = $126,000)	$126,000
TOTAL:	$631,000
Minus Borrowing Authority Previously Granted	($250,000)
TOTAL ADDITIONAL BORROWING AUTHORITY REQUESTED	**$381,000**

Mr. Callahan testified that after discussions with Sugar Creek's representatives, personnel with the SRF preliminarily agreed to issue low-interest financing not only for the construction of the new water line beneath Fountain Lake Drive, but to convey a forgivable loan to Sugar Creek (which will effectively operate as a grant) to cover the costs to install service laterals to each residence. Based on conversations with SRF, Mr. Callahan testified that SRF will structure the forgivable loan as a standard SRF loan that will automatically be forgiven in four years provided Sugar Creek satisfies SRF's lending requirements. Mr. Callahan testified that SRF intends to size the forgivable loan in an amount sufficient to "buy down" Sugar Creek's water rate to Riley Village to approximately $45.00 per month. He noted that this is advantageous to the residents of Riley Village who, without the SRF loan, would otherwise pay an estimated $1,500 per residence for the service lateral installation.

In order to restructure the Project and obtain the necessary SRF approvals, Mr. Callahan stated that additional costs will be incurred. As an example, he stated that Sugar Creek will be required to: (i) prepare and obtain approval of an Amended Professional Engineering Report; (ii) prepare and obtain bids for the new, expanded Project; (iii) prepare, obtain, and record individual easements from all Riley Village residents; (iv) prepare and file supplemental testimony and exhibits in this Cause (and obtain Commission approval); and (v) retain bond counsel. Mr. Callahan testified that none of these fees were included in the original estimates. He also stated that his updated Project costs include an amount for federal and state income tax because, based upon Sugar Creek's research, Sugar Creek will incur an obligation for federal and state income tax as a result of the forgivable loan. Mr. Callahan stated that his Project cost estimate and proposed loan amount includes an amount to "gross-up" or offset the state and federal income state liability.

Mr. Callahan testified that if Sugar Creek did not receive the forgivable loan, the Riley Village customers would see, at a minimum, a rate higher than $45.00 per month and would have to pay an estimated $1,500 to install a new service lateral and interconnect with Sugar Creek's new water main. Mr. Callahan stated that, as instructed by the Commission in its December 22, 2009

Order, Sugar Creek inquired about a bank loan of $126,000 for the service line installations (derived by multiplying the $1,500 cost times the eighty-four Equivalent Dwelling Units allocated to Riley Village) that would allow Sugar Creek to finance the installations and allow customers to repay Sugar Creek through a monthly surcharge.

Mr. Callahan stated that, based upon his conversations with the bank (and assuming Sugar Creek does not receive a forgivable loan for the service lateral installations), customers who finance the $1,500 installation through a Sugar Creek loan with a ten-year payback period would have to pay a monthly surcharge of at least $21.00, and $34.40 for a five-year payback period. He testified that, assuming Sugar Creek borrowed funds to connect each customer, and assuming the basic rate was adjusted to $52.54, the customer's monthly bill, including the surcharge, would either be $73.54 or $86.94. Mr. Callahan noted that the SRF forgivable loan will obviate the need for the service lateral bank loan and the customer's total monthly rate will be reduced to approximately $45.00 per month.

Mr. Callahan testified that in order to receive an SRF low-interest loan and forgivable loan, Sugar Creek must demonstrate that its rates will be sufficient to recover its revenue requirements and provide coverage for the SRF debt. Mr. Callahan attached to his testimony schedules that calculate the rate adjustment necessary to meet Sugar Creek's revenue requirements and SRF's lending requirements. He outlined the three funding options for the Project. Under Scenario A, the Riley Village customers will pay a minimum of $52.54 along with the monthly surcharge of $21.00 (ten-year payback) or $34.40 (five-year payback) for the service line financing. This scenario assumes Sugar Creek will seek funding of the service line laterals with a bank. In Scenario B, Mr. Callahan assumed that SRF would provide low-interest funding for the service laterals, which would have to be repaid to SRF. In this case, the monthly charge for the Riley Village customers would be $60.89 per month. There would be no surcharge for the service line laterals. In Scenario C, he calculated a rate of $45.04 per month based on SRF's representation that SRF would be willing to issue a forgivable loan to Sugar Creek to cover a significant portion (i.e. $367,000) of the Project costs, including the cost of installing individual service laterals.

Mr. Callahan testified that Sugar Creek is seeking authority to borrow a total of $631,000. In order to "buy-down" the residential rate to approximately $45.00 per month, Sugar Creek will request an SRF grant of $367,000 and a standard SRF loan of $264,000. Because Sugar Creek previously received authority in Cause No. 43579 to incur $250,000 in long-term debt, he stated that Sugar Creek is now seeking an additional $381,000 in borrowing authority to complete the Project. He noted that because the SRF loan will be structured as a forgivable loan with a term of more than one year, the vast majority of the additional authority requested in this Cause will hopefully be the $367,000 forgivable loan. Mr. Callahan stated that if Sugar Creek is unsuccessful in obtaining a forgivable loan, Sugar Creek will pursue a traditional SRF loan to construct the service laterals to the individual Riley Village customers instead of a bank loan.

Mr. Callahan stated that Sugar Creek is prepared to file a true-up report based upon the actual financing received from SRF. He stated that upon completion of the SRF-financed Project but before final interconnection to the individual Riley Village customers, Sugar Creek would propose to file a true-up report with the Commission establishing the final costs of the SRF-financed Project, the amount and type of debt incurred from SRF, and the resulting rates that will be imposed on each Riley Village customer.

Mr. Callahan described the anticipated structure and conditions for the forgivable loan. He testified that the forgivable loan will be structured as a loan that will be forgiven by SRF after four years provided Sugar Creek meets SRF's lending requirements and conditions for receipt of the forgivable loan. He stated that SRF has not indicated the exact conditions that will be imposed on Sugar Creek if it were to receive the forgivable loan; however, he noted that SRF will likely impose the same types of conditions as when SRF awarded stimulus grants under the American Recovery and Reinvestment Act of 2009. These conditions included, among other things, that the borrower maintain rates in an amount sufficient to make timely payments on all outstanding obligations. Mr. Callahan testified that, based on his experience in working with SRF and its lending requirements, he anticipates that Sugar Creek will be able to comply with all lending requirements and that after four years the loan will be forgiven.

Mr. Callahan testified that SRF has required Sugar Creek to complete an amended Preliminary Engineering Report ("PER"). He stated that Sugar Creek's engineering consultant, Triad Associates, Inc., submitted the amended PER to SRF, and Mr. Callahan submitted the amended PER to the Commission as a late-filed exhibit to his testimony. Mr. Callahan also noted that as a condition to receiving an SRF loan or forgivable loan, SRF has required Sugar Creek to have a legal right to install and thereafter operate and maintain the service laterals from the main to each structure within Riley Village. For this reason, SRF has demanded that Sugar Creek obtain an easement from each customer within Riley Village. If Sugar Creek does not obtain an easement from a given customer, Mr. Callahan understands that SRF will not provide funds to Sugar Creek to install a service lateral for that particular customer. In this case, it will then be the customer's responsibility to pay for the service lateral and interconnection with Sugar Creek's main, or service will not be available.

Mr. Callahan testified that Sugar Creek has contacted the Riley Village Homeowners Association ("Association") to discuss the proposed financing for the Project and the need for individual easements from the Riley Village customers. He stated that the Association has been supportive of the Project and has sponsored meetings, contacted individual residents to encourage them to dedicate easements to Sugar Creek for the Project, and granted the necessary easement to Sugar Creek for installation of the water main along Fountain Lake Drive. He testified Sugar Creek's engineer attended a meeting of the individual residents to discuss the Project, and Sugar Creek sent two different letters to residents requesting easements for the Project. He stated that as of the date of the filing of his testimony, almost 70% of the homeowners provided an easement to Sugar Creek to allow Sugar Creek to install the service laterals for the individual homeowners. Mr. Callahan also testified that Sugar Creek has coordinated its efforts with the OUCC, and the OUCC is supportive of Sugar Creek's request for additional borrowing authority to complete the Project as described in his supplemental testimony.

B. OUCC's Testimony. OUCC witness, Charles Patrick, addressed Petitioner's request for additional borrowing authority totaling $631,000 to complete the Project. Mr. Patrick noted that according to the numbers provided by Mr. Callahan, all but $264,000 of the loan would be forgivable, effectively making a $367,000 grant of funds from the SRF. Mr. Patrick described the benefits of the Project, summarized the OUCC's original position with respect to the Project, and noted the Commission's findings in the December 22, 2009 Order.

Mr. Patrick stated SRF has preliminarily agreed that of the $631,000 Project cost, SRF will provide a four-year forgivable loan in the amount of $367,000. This loan will be forgiven after four years provided that Sugar Creek meets SRF's lending requirements. The remaining amount (i.e. $264,000) will be repaid over twenty years at an interest rate of 2.92%. Mr. Patrick explained Petitioner's request for additional borrowing authority by noting that in order to issue the forgivable loan, SRF requires that Petitioner be granted Commission authority to borrow both the non-forgivable and forgivable portions of the loan. Mr. Patrick noted the $250,000 previously authorized in the December 22, 2009 Order did not include any dollars for the individual service lines for Sugar Creek customers. Also, since $367,000 of the proposed SRF debt will be forgiven, Mr. Patrick explained that Petitioner seeks to recover $136,000 for the "gross up" for state and federal income taxes.

Mr. Patrick explained the purpose of the forgivable loan is to "buy down" the monthly water rate and noted Sugar Creek's need to obtain individual easements from each customer to install service lateral to each customer's residence. He also noted that Sugar Creek's rates must be set at a level to cover its indebtedness to SRF and Sugar Creek's need to file a true-up report with the Commission. Mr. Patrick also discussed the cost to each customer if Sugar Creek did not include the cost of connections in its financing.

Mr. Patrick noted that the additional financing authority is significant. He asserted that if Petitioner somehow fails to achieve forgiveness of the loan through its own error or omission, the ratepayers should not be obligated to pay higher rates as a consequence. He added that if Petitioner fails to achieve forgiveness of the loan, the OUCC reserves any argument it may have with respect to the reasonableness and prudence of any particular items Petitioner proposes to put in rate base as a cost of the Project. Mr. Patrick stated that the OUCC agrees with Petitioner's requested proposed financing authority subject to certain conditions.

First, Mr. Patrick stated the approval for the additional financing should be conditioned on financing through the SRF program and issuance of the forgivable loan. Second, Mr. Patrick stated that Petitioner should be required to comply with all requirements and conditions imposed by SRF to achieve forgiveness of the loan and advise the OUCC and the Commission of any event or condition that would disqualify forgiveness of the loan. Third, he stated Petitioner should maintain a permanent, separate file to accumulate each invoice that SRF pays on its behalf including construction costs (mains, service lines, and other appurtenances), engineering costs, accounting costs, legal costs, and SRF fees. Also, he stated this file should contain documentation for debt forgiveness of the loan and any federal or state taxes paid by SRF. Fourth, Mr. Patrick stated Petitioner should be required to record the full amount of the forgivable loan as Contributions in Aid of Construction ("CIAC") and amortize it at the same composite rate as the depreciation rate authorized by the Commission.

Fifth, Mr. Patrick stated Petitioner should be required to notify any prospective purchaser of the utility plant that a portion of the Project was paid for with a forgivable loan and was therefore contributed to the utility. He added Petitioner should be prohibited from seeking to include in any sale price the value of the Project to the extent paid for by the forgivable loan. Sixth, Mr. Patrick stated that, upon completion of the SRF financed Project but before final interconnection of the individual Riley Village customers, Petitioner should be required to file with the Commission a true-up report establishing the final costs for the SRF financed Project and the amount of the forgivable loan. Finally, Mr. Patrick stated that in exchange for the financing authority requested, Petitioner should be authorized to collect in rates for water service no more than $45 per month per Equivalent Dwelling Unit.

*C. **Sugar Creek's Supplemental Testimony.*** Sugar Creek filed the supplemental testimony of Patrick Callahan to alert the Commission of two developments that reduce the amount of additional borrowing authority requested by Sugar Creek. Mr. Callahan testified that Sugar Creek and SRF were ultimately able to structure the financing to qualify for a tax exemption under Section 118 of the Internal Revenue Code, and therefore, there is no need to request $136,000 for a state and federal tax "gross-up." Additionally, Mr. Callahan testified that his original calculation needed to be adjusted to include a contingency allowance of $15,550 that was shown in Sugar Creek's amended PER, which was prepared and filed with the Commission after his initial prefiled testimony. Mr. Callahan stated that it is necessary and customary to include a reasonable amount for engineering contingencies. After these adjustments, Mr. Callahan testified that the total amount of additional borrowing authority requested is reduced from $381,000 to $260,550. After the adjustments are made, Mr. Callahan testified that the elements of the requested borrowing authority are as follows:

EXPENSE DESCRIPTION	**AMOUNT**
Construction	$185,000
Engineering	$ 67,500
Legal	$ 87,000
Accounting	$ 14,500
SRF Fee	$ 15,000
Service Lateral Cost ($1,500 per EDU x 84 EDUs = $126,000)	$126,000
Contingencies	$15,550
TOTAL:	$510,550
Minus Borrowing Authority Previously Granted	($250,000)
TOTAL ADDITIONAL BORROWING AUTHORITY REQUESTED	**$260,550**

4. **Commission Findings.** The evidence presented in this Cause indicates that, in order to meet the conditions necessary to secure the forgivable SRF loan, Sugar Creek will incur several additional expenses that necessitate additional borrowing authority, including the SRF fee; an amended PER; preparation of bids for the expanded Project to include the service lateral work; expenses to secure and record individual easements from at least eighty-four homeowners; bond

counsel fees; and the preparation of, and filing expenses for, supplemental testimony and exhibits to obtain the necessary Commission approvals for the financing authority. The evidence indicates that the estimated total Project cost is $510,550. The Commission's December 22, 2009 Order permitted Sugar Creek to incur long-term indebtedness for the remaining $250,000. Therefore, the Commission authorizes Sugar Creek to incur an additional $260,550 in long-term debt ($260,550 + $250,000 = $510,550).

The Commission finds that granting the requested additional borrowing authority in the form of a forgivable SRF loan benefits the Riley Village customers and Petitioner and is therefore in the public interest. As discussed in our December 22, 2009 Order, installation of the Project will allow Petitioner to disconnect non-paying customers, and a new water main will be installed, which will increase service quality. Also, the Riley Village customers will not be obligated to pay $1,500 for each service line. Thus, the water main and individual service connections will be installed without costing customers what could have been a water rate increase up to as much as $86.94 per month. Instead, the SRF will buy down monthly water rates to $45.04.

According to Petitioner and the OUCC, if Petitioner is unable to secure a forgivable SRF loan to pay for the requested additional financing, it may be able to secure an SRF loan repayable over twenty years at 2.92% interest, or a bank loan. The Commission finds that upon completion of the Project financed in part by a forgivable loan, but before final interconnection to the individual Riley Village customers, Sugar Creek shall file a true-up report with the Commission establishing the final costs of the SRF-financed Project, the amount and type of debt incurred from SRF, and the resulting rates that will be imposed on each Riley Village customer. Further, Petitioner shall advise the OUCC and the Commission immediately upon the occurrence of any event or condition that would disqualify forgiveness of the loan. If Petitioner is unable to secure a forgivable SRF loan to finance a portion of the Project and therefore must secure a low-interest SRF loan or bank loan, it shall file with the Commission a request to incur such debt in separately docketed proceeding.

The Commission agrees with the OUCC that Petitioner should maintain a separate file containing each invoice that SRF pays on its behalf including construction costs, engineering costs, accounting costs, legal costs, and SRF fees. The file should also contain documentation for debt forgiveness of the loan. However, the Commission finds that the way in which the forgivable loan should be recorded on Sugar Creek's books should be addressed in Sugar Creek's next rate case.

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

1. Sugar Creek is hereby authorized to incur an additional $260,550 in long-term debt. Sugar Creek's total long-term debt incurred to complete the Project shall not exceed $510,550.

2. Upon completion of the Project financed in part by an SRF forgivable loan, but before final interconnection to the individual Riley Village customers, Sugar Creek shall file a true-up report with the Commission in accordance with Finding Paragraph No. 4.

3. If a forgivable SRF loan is secured, Petitioner shall maintain a separate file to accumulate each invoice SRF pays on its behalf including construction costs, engineering costs,

accounting costs, legal costs, and SRF fees. Petitioner shall also maintain documentation concerning debt forgiveness of the loan.

4. If Petitioner is unable to secure a forgivable SRF loan to complete the Project, Petitioner shall file a Petition seeking approval to incur long-term debt with the Commission in a separately docketed proceeding in accordance with Finding Paragraph No. 4. Petitioner shall also notify the Commission and the OUCC immediately upon the occurrence of any event or condition that would disqualify forgiveness of the loan.

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

HARDY, ATTERHOLT, LANDIS, MAYS AND ZIEGNER CONCUR:

APPROVED: SEP 08 2010

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

Sandra K. Gearlds

Sandra K. Gearlds
Acting Secretary to the Commission