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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF THE CITY OF SOUTH) BEND, INDIANA FOR AUTHORITY TO) ISSUE BONDS, NOTES, OR OTHER) OBLIGATIONS ON AN EXPEDITED) BASIS TO TAKE ADVANTAGE OF) FEDERAL FUNDING MADE) AVAILABLE PURSUANT TO THE) AMERICAN RECOVERY AND) REINVESTMENT ACT OF 2009)	CAUSE NO. 43711 <u>PHASE II ORDER</u> APPROVED: OCT 07 2009
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BY THE COMMISSION:
Jeffrey L. Golc, Commissioner
Lorraine Hitz-Bradley, Administrative Law Judge

On June 15, 2009, the City of South Bend, Indiana ("Petitioner") filed its Petition with the Commission seeking financing authority for the construction of various improvements to Petitioner's property plant and equipment. Petitioner filed testimony and exhibits constituting its case-in-chief on June 16, 2009.

Due to its request for expedited relief, Petitioner proposed a procedural schedule for the filing of testimony and an evidentiary hearing. Consistent with that prayer for relief, the Commission approved an expedited procedural schedule by a Docket Entry issued on June 25, 2009.

On July 8, 2009, the Indiana Office of Utility Consumer Counselor ("OUCC") prefiled the testimony of Edward R. Kaufman and a *Joint Motion to Amend Procedural Schedule* ("Joint Motion"). In the *Joint Motion*, the OUCC and Petitioner requested that the Commission bifurcate this proceeding into two phases: Phase I to address Petitioner's request for authority to borrow up to \$492,000 from the State Revolving Fund ("SRF") and Phase II to address Petitioner's request for approval to borrow \$5,380,000 from the Indiana Bond Bank or in a competitive sale. The OUCC and Petitioner agreed that the remaining portion of the requested financing did not need to be addressed on the same expedited basis and proposed a procedural schedule to address the Phase II portion of Petitioner's case. The Presiding Officers granted the *Joint Motion* by a Docket Entry dated July 13, 2009.

Following an evidentiary hearing held on July 24, 2009, the Commission entered a Phase I Order on August 5, 2009, approving Petitioner's request for approval to borrow funds through the SRF. Pursuant to proper legal notice, an evidentiary hearing to address Phase II of this proceeding was held on August 27, 2009 in Room 224 of the National City Center, 101 West Washington Street, Indianapolis, Indiana. The evidence offered by Petitioner and the OUCC was entered into evidence without objection. No members of the public appeared at the hearing or otherwise sought to testify.

Based upon the applicable law and evidence herein, and being duly advised in the premises, the Commission now finds:

1. **Statutory Notice and Commission Jurisdiction.** Due, legal and timely notice of the public hearing conducted by the Commission in this Cause was given and published as required by law. Petitioner owns and operates a “municipally owned utility” as that phrase is used in Ind. Code § 8-1-2-1(h) and is subject to the jurisdiction of the Commission in the manner and to the extent provided by laws of the State of Indiana. I.C. § 8-1.5-2-18 specifies that this Commission may authorize a municipality to issue bonds to pay for improvements to its utility. Accordingly, we have jurisdiction over the Petitioner and the subject matter of the Petition.

2. **Petitioner’s Characteristics.** Petitioner is a municipality that owns and operates plant and equipment within the State of Indiana for the production, transmission, delivery, and furnishing of water to the public within and around the City of South Bend, Indiana.

3. **Relief Requested.** In this Phase II proceeding, Petitioner seeks approval to borrow up to \$5,380,000 from the Indiana Bond Bank or in a competitive sale (the “IBB Bonds”) which will be used to fund infrastructure improvement and equipment procurement projects.

4. **Evidence of the Parties.** The evidence of record shows that Petitioner has planned a number of improvements to its utility (the “IBB Projects”) to be funded by the proceeds from the proposed IBB Bonds. Below is a listing and general description of the planned improvements as set forth in the evidence of record.

(a) *Ironwood Drive Water Main and Booster Station:* Construction of a new booster pumping station at the Ireland Road Storage Tank Site, along with the installation of approximately 7,000 feet of 12” water main that is needed to supply the higher pressure water to the area and loop the system. This project will resolve the issue of inadequate water pressures for several existing customers and ensure adequate flow to the high pressure area.

(b) *Carroll Road/Kern Road Water Main:* Installation of 7,900 feet of 16” water main along Carroll Street and Kern Road. This project will allow properties along Carroll Street to connect to a water system and abandon their residential wells, which have been contaminated with nitrates. This project will also improve redundancy in the area and provide increased water pressure and supply.

(c) *Equipment Procurement:* The equipment procurement includes two tandem axle dump trucks, one backhoe and residential water meters. This equipment will allow the City to retire antiquated equipment in the current City fleet. The purchase of residential water meters will allow the City to continue its current water meter replacement program.

As noted in the Phase I Order in this Cause, the Common Council of the City of South Bend, Indiana adopted an ordinance (Ordinance No. 9937-09), which the Petitioner attached to its case-in-chief and made a part of the record in this Cause, authorizing the issuance of up to \$6,200,000 in revenue bonds, for a term not to exceed twenty (20) years after substantial completion of the projects, bearing an interest rate no greater than seven percent (7%), and directed that the proceeds be used to pay for the specified improvements to the Petitioner’s utility infrastructure.

Petitioner's evidence also contained balance sheets for Petitioner's utility, an estimated amortization schedule for the IBB Bonds and other financial data sponsored by Mr. John R. Skomp, a Certified Public Accountant, showing that Petitioner's current rates are sufficient to pay for the operation, maintenance and depreciation of Petitioner's utility as well as to pay the principal and interest of the IBB Bonds and previously issued indebtedness.

The OUCC presented the testimony of Mr. Kaufman and Mr. Pettijohn to address Phase II of Petitioner's request. Mr. Pettijohn discussed and confirmed the value and efficacy of Petitioner's IBB Projects and recommended that the Commission approve Petitioner's capital improvements. Mr. Kaufman reviewed Petitioner's proposed Phase II financing and recommended that the Commission approve Petitioner's request for authority to borrow \$5,380,000. Mr. Kaufman also made two additional recommendations. First, Mr. Kaufman recommended that within two weeks of closing on the IBB Bonds, Petitioner should provide a report to the Commission and the OUCC that would include the final terms of the loan, including the amount borrowed and the interest rate, as well as a list of actual soft costs incurred by Petitioner to close on its proposed loan. Second, Mr. Kaufman noted that Petitioner's outstanding 1997 bonds will be paid off at the end of 2011 and South Bend's annual debt service will be reduced by approximately \$2.0 million. Mr. Kaufman recommended that if Petitioner does not initiate a rate case by December 31, 2011 that incorporates the effect of the 1997 loan being paid off, then Petitioner should be required to file a new tariff reducing its rates to properly recognize the reduction in revenue requirements.

In rebuttal, Petitioner's witness Mr. Skomp objected to both of the additional recommendations made by Mr. Kaufman. Mr. Skomp testified that the reporting requirements proposed by the OUCC would duplicate information already being provided to other state agencies as part of the financing process and which, if needed in a subsequent proceeding before the Commission, could be provided at that time. Mr. Skomp also objected to the OUCC's request that the Commission require Petitioner to file an automatic future rate adjustment based upon a single component of Petitioner's revenue requirement. Mr. Skomp indicated that such "single issue ratemaking" is based on the unrealistic assumption that all other components of Petitioner's annual costs would remain static. Mr. Skomp further disputed whether the possible reduction in debt service at the end of 2011 would be significant to the Petitioner's revenue requirements.

At the evidentiary hearing, Petitioner stipulated on the record that it would agree to file a report after Petitioner closes on the IBB Bonds, as recommended by the OUCC. Petitioner further stipulated on the record that it would file a rate petition during calendar year 2010 which would reflect the impact of the 1997 bonds being paid off, with any resulting rates to be made effective January 1, 2012. The OUCC agreed on the record that these stipulations resolved the concerns raised by Mr. Kaufman and that as a result there were no remaining issues between the parties.

5. Commission Findings. Based on the evidence presented, the Commission finds that the proposed IBB Projects will serve the public interest by improving water quality and the efficiency of Petitioner's water utility. The Commission further finds that the Petitioner's proposed method of paying for these improvements is reasonable. Accordingly, we find that the Petitioner should be authorized to borrow up to \$5,380,000 in bonds through the Indiana Bond Bank or in a competitive sale.

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

1. The City of South Bend, Indiana is hereby authorized to issue water works revenue bonds in the principal amount of up to \$5,380,000 in accordance with the provisions and for the purposes described herein.

2. Within thirty (30) days of completing the financing approved in this Order, Petitioner shall file a written report with the Commission that sets forth the actual terms of the financing.

3. In accordance with I.C. § 8-1-2-85, Petitioner shall within thirty (30) days of receipt of the bond proceeds authorized herein submit to the Secretary of the Commission a fee of twenty-five cents (\$0.25) for each \$100 of waterworks revenue bonds issued to be paid into the State Treasury and deposited into the Commission public utility fund.

4. In accordance with I.C. § 8-1-2-70, Petitioner shall pay the following itemized charges within twenty (20) days from the date of this Order to the Secretary of the Commission, as well as any additional costs which were or may be incurred in connection with this Cause.

Commission Charges	\$ 513.34
Legal Advertising Charges	\$ 98.55
OUCG Charges	\$ <u>1,615.62</u>
TOTAL	\$ 2,227.51

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

HARDY, GOLC, ATTERHOLT, 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