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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF RIVERSIDE WATER COMPANY,)	
INC., AN INDIANA CORPORATION FOR)	CAUSE NO. 44089
AUTHORITY TO EXECUTE AND DELIVER LONG-)	
TERM LOAN AGREEMENTS TO BORROW UP TO)	APPROVED: 'JUL 11 2012
A MAXIMUM OF \$1 MILLION FOR A PERIOD IN)	
EXCESS OF TWELVE MONTHS)	

ORDER OF THE COMMISSION

Presiding Officers:

Larry S. Landis, Commissioner

Loraine L. Seyfried, Chief Administrative Law Judge

On October 7, 2011, Riverside Water Company, Inc. ("Petitioner" or "Riverside") filed its Verified Petition in this Cause with the Indiana Utility Regulatory Commission ("Commission"). Also on October 7, 2011, Riverside filed the testimony and exhibits of David J. Stinson, Riverside's President. On February 8, 2012, the Indiana Office of Utility Consumer Counselor ("OUCC") filed the testimony and exhibits of Charles E. Patrick, a Utility Analyst in the OUCC's Water/Wastewater Division; Edward R. Kaufman, a Senior Analyst at the OUCC; and Harold L. Rees, Senior Utility Analyst in the OUCC's Water/Wastewater Division. On February 21, 2012, Riverside filed the rebuttal testimony of Mr. Stinson.

An Evidentiary Hearing was held in this matter on March 7, 2012 at 9:30 a.m. in Room 222 of the PNC Center, 101 W. Washington Street, Indianapolis, Indiana. Petitioner's and the OUCC's evidence was admitted into the record without objection. The Evidentiary Hearing was continued until May 2, 2012 at 10:00 a.m. in Room 222 of PNC Center. On March 13, 2012, the Presiding Officers issued a Docket Entry requesting that Petitioner respond to certain inquiries. On April 13, 2012 and April 30, 2012, Petitioner filed its responses to the Docket Entry. At the May 2, 2012 Evidentiary Hearing, Riverside's responses to the Docket Entry questions were admitted into the record. No members of the public appeared or otherwise sought to participate.

Based upon the applicable law and the evidence herein, the Commission now finds:

1. **Notice and Jurisdiction.** Due, legal, and timely notice of the Evidentiary Hearing in this Cause was given and published by the Commission. Petitioner is a "public utility" pursuant to Indiana Code § 8-1-2-1. Petitioner is subject to the jurisdiction of the Commission in the manner and to the extent provided by the Public Service Commission Act, as amended, and other pertinent laws of the State of Indiana. Accordingly, the Commission has jurisdiction over Petitioner and the subject matter of this proceeding.

2. **Petitioner's Characteristics and Business.** Petitioner is a small investor-owned water utility organized in the State of Indiana. It serves approximately 1,200 customers in various rural and municipal areas in Clark County, Indiana. Petitioner provides transmission

facilities, distribution facilities, land, land rights, equipment, materials, supplies, working capital, and other property that is used and useful for the rendering of potable water service to its customers.

3. **Relief Requested.** Pursuant to Indiana Code §§ 8-1-2-76, -77, -78, -79, -80, -81, and -83, Petitioner seeks authority to issue evidences of indebtedness payable at periods of greater than twelve months. Specifically, Petitioner is seeking Commission approval of a Promissory Note Modification and Mortgage Modification Agreement with First Savings Bank of Clarksville, Indiana in the amount of \$512,501.38. Petitioner also seeks approval of a Promissory Note and Indemnifying Real Estate Mortgage with New Washington State Bank of New Washington, Indiana in the amount of \$205,328.41.

4. **Petitioner's Evidence.** Mr. Stinson testified that the utility was organized by his father-in-law in 1964. Mr. Stinson and his wife acquired the common stock of Riverside in 1996 and have been operating the utility since that time. Prior to executing the promissory notes that are the subject of this proceeding, Petitioner did not have any indebtedness which was payable at periods of more than twelve months. Instead, Riverside borrowed funds from two local banks, First Savings Bank and New Washington State Bank, pursuant to short-term lines of credit that the banks, since the early 1990s, renewed at the end of their terms. Riverside's affiliate, David J. Stinson and Associates, a real estate development business, also operated using a line of credit from First Savings Bank. These funds were borrowed to pay off prior debt, to pay general operating costs, and to acquire property for the location of a new well.

According to Mr. Stinson, in early 2010, First Savings Bank decided not to continue this renewal process. On June 4, 2010, First Savings Bank filed suit against Petitioner and David J. Stinson and Associates in Clark County Circuit Court. Riverside was able to settle the suit in late April to early May 2011, in part by agreeing to execute a promissory note that is the subject of this proceeding, which totals \$512,501.38. He stated Petitioner, pursuant to the settlement agreement, executed a promissory note with the New Washington State Bank in the amount of \$205,328.41. Riverside was also required to execute a new mortgage with First Savings Bank to replace the mortgage on Riverside's utility property first entered into in 1984. The settlement agreement with First Savings Bank recognized that the validity of the notes is contingent on approval by the Commission.

5. **OUC's Evidence.** Mr. Patrick described the review of Petitioner's books and records he performed and made a number of accounting recommendations. He said Riverside has a financial relationship with David J. Stinson & Associates, Inc. David J. Stinson is the President of Riverside and one of its shareholders. Mr. Stinson is also the President of David J. Stinson & Associates, Inc. and one of its shareholders. On December 31, 2009, Mr. Stinson executed a promissory note ("Affiliated Note") from David J. Stinson & Associates payable to Riverside for \$400,658.

Mr. Patrick testified that the Affiliated Note promises to pay Riverside \$400,658 or such lesser amount as shall equal the aggregate unpaid principal amount of the loans together with interest from the date of the Affiliated Note at a rate per annum equal to the borrower's cost of funds. There is no amortization or schedule of payments attached to the note; the note merely indicates that David J. Stinson & Associates acknowledge its indebtedness to Riverside. There

have been no interest or principal payments on the Affiliated Note since December 31, 2009, and the Affiliated Note balance (on the general ledger) has grown to \$489,082 on December 31, 2009 and \$505,440 on December 31, 2010, due to additional activity between Petitioner and David J. Stinson & Associates. Mr. Patrick said this activity is not related to the Affiliated Note. He testified that the only activity in this general ledger account should be for accrued interest related to the executed note payable.

Mr. Patrick stated the activity not related to the Affiliated Note should be recorded in a general ledger account such as Accounts Receivable from David J. Stinson & Associates. There should be detailed invoice information for each transaction with supporting documentation attached to the invoice. He testified that each of these transactions should have a cash settlement date monthly. Petitioner is not a bank and should not pay for the affiliated entity's expenses or costs unless it is reimbursed in a timely manner.

Mr. Patrick discussed Petitioner's request for Commission approval of the promissory notes and mortgage modification with First Savings Bank and New Washington State Bank and the resulting settlement agreement. He testified that Riverside's financial position is extremely poor. As of January 2012, Petitioner's total outstanding debt is approximately \$691,000. Per its annual reports, Petitioner has not possessed more than \$11,081 in cash in any year since December 2007. Mr. Patrick noted that of the past three annual reports (2008, 2009, and 2010), the cash balance has always been less than \$255. The Affiliated Note for \$400,658 might be considered a "non-performing loan." He stated that although there is no payment terms included in the notes receivable from David J. Stinson & Associates, it has been two years since the note was executed and no payment for either principal or interest has been made by David J. Stinson & Associates. When asked to explain how and why these receivables were generated, Petitioner's response was that "Riverside Water Company, Inc. was the lender of last resort." Thus, a large portion of Petitioner's discretionary cash has been used for non-utility purposes, leaving the utility in a "cash poor" position.

Mr. Patrick stated that since the end of 2004 Petitioner has increased its gross Utility Plant in Service ("UPIS") by \$235,334 (\$895,749 in December 2010 less \$660,415 at the end of December 2004). He was unable to determine the exact rate base at December 31, 2011. But, using the information available, including the December 31, 2010 Annual Report, the rate base value is \$279,245. Mr. Patrick explained in detail the way he derived this number, including the subtraction of UPIS that is no longer used and useful, accumulated depreciation for 2010, estimated accumulated depreciation for 2011, and contributions in aid of construction ("CIAC").

Mr. Patrick testified Petitioner does not keep its general ledger current and updates its general ledger after year-end and before it needs to file its tax returns. He noted Petitioner was unable to provide a year-to-date general ledger for November 2011. Petitioner appears to be paying on a current basis routine expenses such as power, computer maintenance, distribution maintenance; and purchases water from Sellersburg Municipal Water Utility. The reimbursement of shared expenses surrounding the affiliated interest contract for shared expenses and for the lease of office, garage, and storage space are generally paid. But any unpaid amounts are added to the affiliated note account. Mr. Patrick stated that the invoices which are most in arrears are invoices payable to Indiana-American Water Company totaling \$101,475.

Mr. Patrick stated the Miscellaneous and Accrued Liabilities general ledger balance represents \$417,300 for accrued salaries for Stinson family members, who work for Riverside. Petitioner has not been able to pay these liabilities because of the lack of cash flow. Petitioner responded to the OUCC's request to provide Petitioner's current capital structure for ratemaking with an amount of \$1,351,684 for total capitalization. Mr. Patrick testified that Riverside's estimated capitalization as of December 31, 2011 is \$532,872. He stated that upon approval of the requested relief in this Cause, Petitioner plans to file a rate case and estimates the rate of relief to be additional revenue of from \$118,000 to \$136,000. He further indicated the OUCC was unable to determine whether Petitioner could justify an increase in rates. Mr. Patrick offered the following recommendations:

1. Order Petitioner to record its Affiliated Notes with David J. Stinson & Associates in a separate general ledger account along with any applicable interest receivable due on this note.
2. Order Petitioner to establish an amortization schedule that will be the basis for repayment of the Affiliated Notes Receivable from David J. Stinson & Associates.
3. Order Petitioner to record any subsequent intercompany activity not associated with the Affiliated Notes in a separate general ledger account.
4. Order Petitioner to properly record affiliated transactions not related to the Affiliated Note and make monthly payments on these outstanding obligations.
5. Order Petitioner to maintain up-to-date general ledgers and financial statements.

Mr. Kaufman testified that the after-the-fact financing authority Petitioner seeks in this Cause is unusual. When the Commission authorizes a utility to issue long-term debt, it must be assured that any proposed debt will not impair the utility's ability to provide adequate and reliable service. If a utility does not have sufficient financial strength, then issuing debt exposes the utility to financial distress.

Mr. Kaufman stated that Petitioner's testimony lacks the analysis the OUCC would rely on to support Riverside's proposal to issue long-term debt. The information reviewed, such as Annual Reports, does not assure the OUCC that Petitioner has the financial strength to issue its proposed long-term debt. He said Riverside's equity capital balance is a negative \$178,593, which is not a sign of financial strength. A utility should have an equity ratio of at least 35% and a debt ratio of no more than 65%. Riverside's balance sheet shows it has "Cash in the Bank" of only \$205. Mr. Kaufman said such a small cash balance shows that Petitioner has a very small cushion to ensure the adequate provision of service.

According to Riverside's income statement, it lost more than \$66,000 in 2010. Mr. Kaufman said that because Petitioner has shown little ability or willingness to invest additional equity into Riverside, it is likely it will have to incur additional long-term debt to meet its capital requirements. He stated Indiana Code § 8-1-2-79 requires a utility to seek Commission authority prior to issuing long-term debt. Mr. Kaufman explained this is not the first time Petitioner has engaged in long-term borrowing and encumbered its assets without first procuring Commission approval as required by Indiana law. The Order in Cause No. 42122 directed Riverside not to incur additional long-term debt without first securing the approval of the Commission.

Mr. Kaufman stated that according to Petitioner, its borrowings were made pursuant to short-term lines of credit that Riverside traditionally renewed around the end of their terms. The lenders later required Riverside to convert these loans into long-term debt. He stated that Petitioner should not be permitted to repeatedly roll over short-term debt in order to avoid the necessity of seeking Commission approval to incur long-term debt.

Mr. Kaufman said Petitioner has not shown that the authorization it seeks would comply with Indiana Code § 8-1-4-1, which requires that the amount Petitioner proposes to borrow must not exceed the utility's fair value. Because the estimated original cost of Petitioner's rate base is only \$279,245, it seems unlikely that Petitioner's fair value rate base would meet or exceed the combined amount of its proposed debt issuances of \$717,830.

Mr. Kaufman testified that in the event any of Mr. Stinson's other businesses default on its promissory notes, the lenders do not have a claim on the assets of Riverside. However, the lenders would presumably have a claim on Mr. Stinson's ownership (shares of common stock) in Riverside. Thus, in the event of a default by any of Mr. Stinson's other businesses, the note holders could claim ownership of Riverside.

He said that despite all of the concerns discussed above (and those by other OUCC witnesses), approving Petitioner's proposal may be the better choice between two difficult alternatives. Petitioner has not fully explained the consequences of what might happen if the Commission rejects Petitioner's proposal. However, given the conditions under which Petitioner entered into its proposed debt, disapproving the proposed debt issuance could prove to be more detrimental than approving it since one of the lenders could have a negative reaction. It is not clear if granting the requested approval will allow the lenders a security interest in the utility plant where none would otherwise exist, which violates Indiana Code § 8-1-2-83(a). Mr. Kaufman said Petitioner should provide assurances that the lenders will not take action which would result in a discontinuation of service. The OUCC seeks a decision from the Commission that provides the best protection to Riverside's customers.

Mr. Rees provided an overview of Petitioner's system and stated that there was very little evidence of customer dissatisfaction. However, Mr. Rees pointed out a number of significant repairs and improvements that may be necessary in the future which may require more financing. For example, the elevated storage tank was inspected approximately ten years ago. The interior coating consists of red lead paint and the exterior is a Tnemec coating. Mr. Rees stated the tank coatings are not being maintained because of a lack of funds, and significant maintenance needs to be performed. Mr. Rees also stated that at times the water levels in the elevated tank are too low in order for normal flushing operations to be performed effectively. This could result in an increased risk to fire protection services. He also noted the telemetry equipment that links the elevated tank operation to the pumping system is not operational. If Riverside resumes producing its own water, this would need to be repaired or replaced.

Mr. Rees also noted Riverside does not have a written policy for a valve turning program. He said Petitioner should have a written policy and the turning of valves every two years should be documented. Mr. Rees testified that Petitioner is not taking daily samples of chlorine residuals

at different locations. Sellersburg is treating the water with chlorine according to IDEM standards, phosphate, and polymer; fluoride is not being added to the water. He said that there is no evidence Petitioner is randomly sampling its water for residual chlorine on a daily basis.

6. Petitioner's Rebuttal Evidence. Mr. Stinson apologized for the position the parties were placed in by the First Savings Bank lawsuit. Mr. Stinson stated his belief that but for First Savings Bank's decision, on very short notice, to discontinue the financing mechanism that had been in place since the early 1990's and the subsequent lawsuit, this matter could have been resolved in a much more orderly manner. Mr. Stinson testified that although Riverside had not performed a fair value study or appraisal, in his opinion, the fair value of Riverside's property is between the costs of reproduction new at current prices and the original cost of the properties (current book value of approximately \$364,000 with an original cost of nearly \$900,000) and is well in excess of the amounts of debt approval requested in this proceeding. In response to many of the concerns expressed by the OUCC, Mr. Stinson testified that Riverside intended to apply for rate relief upon approval of Petitioner's request in this proceeding. Mr. Stinson stressed that Riverside is very willing to work with the OUCC and Commission Staff under 170 IAC 14-1-1 to resolve as many issues as possible.

7. Docket Entry Responses. On March 13, 2012, the Presiding Officers issued a Docket Entry requiring Petitioner to respond to several inquiries. In its responses, Petitioner provided a detailed list of services David J. Stinson & Associates provides to Petitioner, including 24/7 utility management and predominantly administrative services. Although Petitioner acknowledged it had filed two affiliated agreements with David J. Stinson & Associates with the Commission for certain services, Petitioner indicated there is no governing agreement concerning the management and administrative services provided. Petitioner also provided data showing why its employee compensation amount (payable to David J. Stinson & Associates) increased from that authorized by the Commission in Cause No. 42133 of \$104,576 to \$159,552.51. Petitioner also submitted its 2011 Annual Report, a list of its debt instruments, and an aged accounts payable listing, exclusive of the long-term debt obligations. These documents indicated that Petitioner owes over \$300,000 to various entities, including Indiana American Water Company, Inc. (\$101,477) and Sellersburg Water and Sewer (\$122,453).

8. Commission Discussion and Findings. Petitioner seeks approval of the issuance of long-term debt totaling approximately \$715,000. The Commission has several concerns with Petitioner's request. First, the evidence indicates Petitioner entered into the long-term debt without first seeking Commission approval pursuant to Indiana Code § 8-1-2-79. And Petitioner is aware that it must first secure permission from the Commission before entering into long-term debt.¹ *Riverside Water Co., Inc.*, Cause No. 42122, 2003 Ind. PUC LEXIS 121, at *32 (IURC Feb. 19, 2003).

Second, pursuant to Indiana Code § 8-1-4-1, it is unlawful for the Commission to approve the issuance of long-term debt in an amount that is greater than the fair value of a public utility's property. Indiana Code § 8-1-2-6 provides that the Commission "shall value all property of every public utility actually used and useful for the convenience of the public at its fair value, giving

¹ We also note that, "[a]n owner, officer, or agent of any public utility who knowingly violates [Indiana Code § 8-1-2-79]... commits a Class D felony." Indiana Code § 8-1-2-79(b).

such consideration as it deems appropriate in each case to all bases of valuation which may be presented or which the commission is authorized to consider....” The purpose of determining a utility’s fair value is to recognize that the value of a utility’s property is not likely equal to its original cost or the amount the utility originally paid to acquire the plant. Inflation (deflation) is the most critical element that would cause the value of the property to be different than the property’s original cost. There is no one particular method for determining a utility’s fair value. However, the two most common methods, depending on the particular circumstances of the utility, include reproduction cost new less depreciation study (see e.g., *Indiana-American Water Co., Inc.*, Cause No. 43680 (IURC April 30, 2010) and original cost (see e.g., *Utility Center Inc., d/b/a Aqua Indiana, Inc.*, Cause No. 43874 (IURC April 13, 2011)).

The OUCC estimated Riverside’s fair value to be \$279,245 based on Riverside’s 2010 Annual Report and deducting certain plant not used and useful. The OUCC’s fair value calculation is based on original cost.

Petitioner did not complete a reproduction cost new less depreciation study or conduct a formal appraisal of the utility property that is used and useful. Instead, Mr. Stinson merely opined (without providing any basis) that he believes Riverside’s fair value is between the cost of reproduction new at current prices and the original or book costs of Petitioner’s rate base. He concluded the current book value of Riverside’s plant and property is approximately \$364,000, with an original cost of nearly \$900,000.

Pursuant to Indiana Code § 8-1-2-73, Petitioner bears the burden of proof to demonstrate the fair value of its used and useful property is greater than its requested long-term debt. Simply opining the utility’s fair value is somewhere between two values, without providing any basis for that opinion, is insufficient. Without sufficient evidence regarding the fair value of Riverside’s property, the Commission cannot ensure that the debt issuance is lawful under Indiana Code § 8-1-4-1.

Third, the Commission is deeply concerned that Petitioner’s current rates are not sufficient to make the debt service payments to repay the long-term debt and meet its remaining financial obligations. Data contained in Riverside’s 2011 Annual Report and loan documents indicates that Riverside will not have sufficient cash flow to make its debt service payments. In fact, analysis of its financial documents (as set forth in the table below) indicates Riverside has an annual cash shortfall of \$40,965. This analysis does not consider the effects of any plant that might be eliminated because it is no longer used and useful or the approximate \$181,000 balloon payment due March 2014 required under the New Washington State Bank loan. The 5.50% interest rate for the First Savings Bank loan was used as the weighted cost of capital rather than a weighted cost of both loans. This is because the land financed by the New Washington State Bank loan is not used and useful, and Riverside does not include it in the 2011 Annual Report for determining UPIS. No amount for cost of equity was included in the weighted cost of capital since, according to the 2011 Annual Report, Riverside had negative equity on its balance sheet.

Estimated Rate Base as of 12/31/2011 ²	\$ 352,201
Weighted Cost of Capital (based on original loan documents)	5.50%
Net Operating Income	19,371
Depreciation Expense (using 1.7% ³ rate and UPIS from 2011)	15,258
Amortization of CIAC (using 1.7% and CIAC from 2011)	(3,528)
Cash for Debt Service	31,101
Debt Service FSB (\$4,188.18 x 12 months) ⁴	50,258
Debt Service NWSB (\$1,817.31 x 12 months) ⁵	21,808
Total Debt Service	72,066
Estimated Cash Shortfall	<u><u>\$(40,965)</u></u>

While Riverside has indicated it will file a general rate case in the near future, it is not clear how a rate increase would affect this analysis, and thus, the utility's ability to repay its debt. In addition, our analysis is based on original cost and we have no evidence as to whether Riverside's fair value is different from, or equal to, original cost. Debt service payments are not a revenue requirement item for investor-owned utilities. Instead, investor-owned utilities generally meet debt service payments from cash flow generated by depreciation expense (net of CIAC amortization) and net operating income. The limited evidence with which we have been presented in this Cause suggests, as further explained below, that Petitioner will not be able to increase its depreciation expense and net operating income to a level that will support the debt payments for the debt we have been asked to approve.

Net operating income is calculated by multiplying rate base by the cost of capital. The loan for \$205,328 was for a future well site, but Riverside does not have sufficient funds and limited, or no ability, to borrow funds to develop a new wellfield. Since Petitioner can continue to purchase water, and its access to capital is limited, it seems unlikely that Petitioner will move forward with wellfield improvements in the near future. Thus, the land cannot be considered

² Using data from Riverside's 2011 Annual Report and the same original cost methodology utilized by the OUCC, we estimated Petitioner's rate base as follows:

Utility Plant in Service	\$ 897,521
Less: Accumulated Depreciation	(383,279)
CIAC	(207,525)
Add: Amortization of CIAC	9,260
Working Capital	36,224
Rate Base	<u><u>\$ 352,201</u></u>

³ The Commission uses a 1.7% depreciation rate for water systems that purchase its water.

⁴ See Petitioner's April 13, 2012 response, answer number 5, to the Presiding Officers' March 13, 2012 Docket Entry.

⁵ See Petitioner's April 13, 2012 response, answer number 5, to the Presiding Officers' March 13, 2012 Docket Entry.

used or useful for purposes of being added to rate base. And, because the loan for \$516,667 has no stated purpose, it is unclear whether any plant or equipment was purchased with the funds. Consequently, it appears Riverside's two loans add little or nothing to rate base.

Cost of capital is determined by a weighted average based on the amount of debt multiplied by the cost of debt and the amount of equity multiplied by the cost of equity. Because Riverside has negative equity capital, cost of capital is based on its cost of debt and the cost of debt is fixed. Thus, the cost of capital will not change. Since rate base is unlikely to materially change and cost of capital is fixed, we would not expect net operating income to change.

Depreciation expense is the value of plant and equipment multiplied by the depreciation rate. Because Riverside purchases water, the depreciation rate is 1.70%. As indicated above, the value of the plant and equipment is unlikely to increase, and may possibly decrease if it is determined that plant and equipment (or any portion thereof) is no longer in service. Thus, as it appears Riverside will continue to purchase water, the depreciation rate will not change and depreciation expense will not likely increase (or may decrease).

Therefore, it is reasonable to conclude that the net operating income plus depreciation expense (net of CIAC amortization) shown above represents in all material respects the amount of cash available to service the existing debt even after Riverside files a request for Commission approval of an increase in rates. Based on all of these concerns outlined above, we find that Commission approval of the issuance of long-term debt in the amount of \$717,830 is not in the public interest and Petitioner's request is denied.

Setting aside the issue of approval of long-term debt, the evidence presented in this Cause has brought to light Riverside's financial, operational and managerial deficiencies. The Commission agrees with the OUCG that Riverside's financial condition is poor. Petitioner has not maintained appropriate equity in the utility (as evidenced in its 2011 Annual Report at p. F-2(a)), nor a sufficient cash balance, especially when considering its debts. Most importantly, based on the above analysis, Riverside does not have the financial capacity to pay its debts for loans it has already executed.

In addition, as a result of the evidence presented by the OUCG in this Cause, which was not refuted by Petitioner, the Commission is concerned about Riverside's operating condition as well. According to the evidence presented, Petitioner has failed to properly maintain the coating on the water tank, maintain appropriate water levels in the tank, and take water samples of chlorine residuals at different locations.

With respect to management of the utility, Petitioner failed to seek Commission approval prior to entering into long-term debt. Petitioner loaned its affiliate, David J. Stinson & Associates, approximately \$400,000 and has failed to obtain repayment of that loan. Petitioner has increased wages of affiliate/contract employees, while increasing its debt, including large amounts owed to wholesale water suppliers. It is disturbing that Riverside would pay its affiliate, David J. Stinson & Associates, for managerial/administrative duties, while it places its customers at risk of being denied water if the wholesale supplier were to terminate the agreement for lack of payment. In fact, one wholesale supplier, Indiana American Water Company, Inc., has ended its contract and sued for payment in court. The OUCG also raised many accounting issues that

need to be rectified, including the failure to properly record affiliate transactions. On the issue of affiliate transactions, in response to a Docket Entry, Riverside indicated that there is no written governing agreement between the utility and David J. Stinson & Associates for the management and administrative services discussed in this Cause. Given that this is Riverside's largest contractor and Indiana Code § 8-1-2-49 requires all affiliated agreements to be on file with the Commission, we find the acknowledgement of this failure unacceptable.

Pursuant to Indiana Code § 8-1-2-58, investigations into matters pertinent to public utilities may be summarily made, with or without notice. If the Commission becomes satisfied that sufficient grounds exist to warrant a hearing pertinent to the matters investigated, Indiana Code § 8-1-2-59 requires that the public utility involved be furnished with a statement notifying it of the matters under investigation. In addition to the foregoing statutory provisions, the Commission notes that the Indiana Court of Appeals has specifically found that inherent in this grant of power is the implicit power and authority to "do that which is necessary to effectuate the regulatory scheme." *South Eastern Indiana Natural Gas v. Ingram*, 617 N.E.2d 943, 948 (Ind. Ct. App. 1993). Thus, the Commission finds that, based on the evidence of record in this Cause, an investigation into Petitioner's financial, operational and managerial capacity shall be commenced within thirty days of this Order.

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

1. Petitioner's request for approval of a Promissory Note Modification and Mortgage Modification Agreement with First Savings Bank of Clarksville, Indiana in the amount of \$512,501.38 and approval of a Promissory Note and Indemnifying Real Estate Mortgage with New Washington State Bank of New Washington, Indiana in the amount of \$205,328.41 is denied.
2. Pursuant to Indiana Code §§ 8-1-2-58 and 59, an investigation into Petitioner's financial, operational and managerial capacity shall be commenced within thirty days of this Order.
3. This Order shall be effective on and after the date of approval.

ATTERHOLT, BENNETT, LANDIS, MAYS AND ZIEGNER CONCUR:

APPROVED: JUL 11 2012

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



**Brenda A. Howe
Secretary to the Commission**