

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF PETITION OF NORTH) CAUSE NO. 44248
DEARBORN WATER CORPORATION, A)
NONPROFIT CORPORATION, FOR) APPROVED:
AUTHORITY TO ISSUE LONG-TERM DEBT)

FEB 13 2013

ORDER OF THE COMMISSION

Presiding Officers:

Carolene Mays, Commissioner

Aaron A. Schmoll, Senior Administrative Law Judge

On September 13, 2012, North Dearborn Water Corporation (“North Dearborn”) filed with the Indiana Utility Regulatory Commission (“Commission”) a Verified Petition requesting authority to issue long-term debt to the United States Department of Agriculture-Rural Development (“Rural Development”).

On October 19, 2012, North Dearborn filed its case-in-chief. On December 5, 2012, the Indiana Office of Utility Consumer Counselor (“OUCC”) filed its prefiled testimony and exhibits. On December 19, 2012, North Dearborn and the OUCC filed a Joint Stipulation and Settlement Agreement (“Settlement Agreement”) with the Commission.

Pursuant to notice as prescribed by law, proof of which was incorporated into the record, the Commission conducted an evidentiary hearing in this Cause on January 8, 2013, at 1:30 p.m. in Room 224 of the PNC Center, Indianapolis, Indiana. At the hearing, North Dearborn and the OUCC introduced into the record their testimony and exhibits, including the Settlement Agreement. No members of the public attended or participated in the evidentiary hearing.

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

1. **Statutory Notice and Commission Jurisdiction.** Due, legal, and timely notice of these proceedings was given as required by law. North Dearborn is a “public utility” as defined in Ind. Code § 8-1-2-1. North Dearborn requests authority to issue long-term debt to Rural Development. Accordingly, the Commission has jurisdiction over Petitioner and the subject matter of this proceeding.

2. **Petitioner’s Characteristics.** North Dearborn is a nonprofit, rural water utility that began serving customers in 1963. Since its inception, North Dearborn’s customer base has grown to 2,022 residential, commercial, and agricultural customers, and its service territory has expanded to include customers in Dearborn, Ripley, and Franklin Counties, Indiana. North Dearborn’s present water system includes wells located along the Whitewater River and a water treatment plant in Franklin County, Indiana. North Dearborn owns and maintains two elevated storage tanks and one ground level storage tank for total storage capacity of 1,075,000 gallons. North Dearborn also

supplements its source of water supply by purchasing water on a wholesale basis from the City of Greendale, Elrod Water Company, Inc. (d/b/a Hoosier Hills Water District), and Tri Township Water Corporation (“Tri Township”).

3. Requested Relief. In this case, North Dearborn proposes to issue long-term debt to Rural Development and use the proceeds to fund certain capital improvements. The cost of the capital improvements, which includes an additional water connection to Tri Township and certain water main replacements (collectively, the “Project”), is estimated to be equal to or less than \$1,400,000. According to North Dearborn’s prefiled evidence, the proposed debt would be for a term of approximately forty (40) years with an interest rate estimated not to exceed 3.875%.

4. North Dearborn’s Prefiled Direct Evidence.

A. Steward Cline. Mr. Cline presented testimony regarding the status of North Dearborn and its system, as well as an explanation of why North Dearborn is requesting authority to incur long-term debt. Mr. Cline explained that it is important for North Dearborn to maintain its system and make improvements where necessary to provide safe, adequate service to its customers. As a mature system, Mr. Cline explained that North Dearborn has many capital needs. According to Witness Cline, however, two particular areas of its system, the York Ridge Road and Weisburg areas, need immediate attention, and North Dearborn will benefit from the redundancy of an additional interconnection with Tri Township.

For the last ten years, Mr. Cline described how the York Ridge Road main had experienced numerous leaks which not only jeopardized North Dearborn’s water supply, but also required time and expense to repair. Witness Cline testified that the Weisburg area had seen a steady increase in customers over the years that had, in turn, taxed the small diameter mains in this area, created low pressure issues, and inhibited North Dearborn’s ability to use its own water supply to meet the needs of its customers in this area. In addition, Mr. Cline stated that the Weisburg area has a number of “dead end” mains that needed to be eliminated in order to improve water quality. Finally, Witness Cline described how North Dearborn would like to fortify its source of supply by constructing an additional connection with another local water utility, Tri Township. According to Witness Cline, the proceeds from the proposed debt would allow North Dearborn to fund the capital improvements to meet these three areas of need.

B. Lori A. Young. Ms. Young sponsored testimony concerning North Dearborn’s proposed Project, along with a 2012 Preliminary Engineering Report (“PER”) that described the background and estimated cost of the Project. In her testimony and PER, Witness Young explained that the Project would generally consist of replacement of approximately 20,650 linear feet of existing water main along York Ridge Road; construction of a new eight inch main and the looping of North Dearborn’s existing system to eliminate two dead end water mains in the Weisburg area; and an additional interconnection with Tri Township. When completed, Ms. Young testified that the Project would benefit North Dearborn and its customers by: (i) reducing the amount of lost water; (ii) reducing the maintenance expense associated with numerous water main breaks along York Ridge Road; (iii) improving the integrity of the water distribution system and North Dearborn’s water quality; (iv) providing better pressure, particularly to customers in the Weisburg area; and (v) providing a redundant source of supply from Tri Township.

C. **Douglas L. Baldessari.** As part of North Dearborn's case-in-chief, Mr. Baldessari presented testimony regarding the specific terms of the Rural Development loan and North Dearborn's existing financial condition. To further explain his testimony, Witness Baldessari submitted a Financing Report dated October 4, 2012, which outlined North Dearborn's revenues, expenses, outstanding indebtedness, estimated project cost, and the anticipated debt service on the proposed Rural Development loan.

In his Financing Report, Witness Baldessari assumed a borrowing amount not to exceed \$1.4 million with an interest rate of 3.875%. Witness Baldessari testified, and the Financing Report contemplates, that the Rural Development loan would have the standard forty (40) year repayment term. Witness Baldessari stated that North Dearborn's existing rates and charges were sufficient to provide debt service coverage of at least 125%. Such coverage should, according to Mr. Baldessari, enable North Dearborn to obtain consent from its existing lender, the Drinking Water State Revolving Loan Fund Program (i.e., the SRF Program). In sum, Mr. Baldessari believed the terms for the proposed financing were reasonable and appropriate for North Dearborn.

5. **OUCC's Prefiled Direct Evidence.**

A. **Edward R. Kaufman.** Mr. Kaufman raised a few concerns regarding North Dearborn's financing proposal, but recommended that the Commission approve North Dearborn's request. He noted that North Dearborn's existing rates would provide sufficient debt service coverage, and the terms of the proposed debt seemed reasonable.

Mr. Kaufman recommended that if North Dearborn were to spend any funds from its debt service reserve for any reason other than to make the last payment on its proposed bond, North Dearborn should be required to file a written report with the Commission and the OUCC within five (5) business days. The report should: (i) state how much North Dearborn spent from its debt service reserve; (ii) explain why it spent funds from its debt service reserve; (iii) cite any applicable loan documents that allow North Dearborn to spend funds from its debt service reserve; (iv) describe North Dearborn's plans to replenish its debt service reserves; and (v) explain any cost cutting activities North Dearborn has implemented to forestall spending funds from its debt service reserve. In addition, Witness Kaufman proposed that North Dearborn be required to provide notice to the Commission and the OUCC within thirty (30) days after issuing the proposed Rural Development debt which identifies the exact amount and terms of the loan.

B. **Harold L. Rees.** Mr. Rees testified regarding North Dearborn's current facilities and the facilities proposed to be installed with the proceeds from the Rural Development loan. Mr. Rees testified that in his professional opinion North Dearborn's facilities are in very good condition; however, like many utilities, it has a few weaknesses in its system and operations. Mr. Rees generally described North Dearborn's proposed emergency water connection to Tri Township, the replacement of small diameter mains in the Weisburg area, and the York Ridge Road water main replacement project. Mr. Rees testified that these projects are needed by North Dearborn to improve the reliability of its water system and upgrade the level of its customer service.

Witness Rees also had several suggestions and recommendations to maintain and further enhance the utility's operations. Specifically, Witness Rees suggested North Dearborn: (i) utilize a fifteen (15) year replacement interval for installing new meters; (ii) consider developing a plan for implementing emergency power, including cost estimates for the different options, for inclusion in its next rate case; and (iii) consider developing a water conservation plan.

6. **Settlement Agreement.** On December 19, 2012, the parties submitted a Settlement Agreement, a copy of which is attached to this Order and incorporated by reference. According to the parties, the Settlement Agreement fairly and reasonably resolves all issues presented in this Cause.

Pursuant to the Settlement Agreement, the parties agreed that North Dearborn should be authorized to issue long-term debt to Rural Development in a total principal amount not to exceed \$1,400,000 at an interest rate of approximately 3.875%. Within thirty (30) days of closing on the approved debt, the Settlement Agreement requires North Dearborn to file a report with the Commission and serve a copy on the OUCC, explaining the terms and purpose of the new loan. If the interest rate is materially different than 3.875%, North Dearborn must include an explanation for the difference.

The Settlement Agreement further provides that if North Dearborn spends any funds from its debt service reserve for any reason other than to make the last payment on the underlying debt, North Dearborn will provide a report to the Commission and the OUCC within five (5) business days after such expenditure that states: (i) how much North Dearborn spent from its Debt Service Reserve; (ii) why and on what it spent the funds from its Debt Service Reserve; (iii) a cite to and quote from any applicable loan documents that allow North Dearborn to spend funds from its Debt Service Reserve; (iv) how North Dearborn plans to replenish its Debt Service Reserve; and (v) any cost cutting activities North Dearborn has implemented to forestall spending funds from its Debt Service Reserve.

Finally, the parties agreed in the Settlement Agreement that, absent technological advances, North Dearborn will consider its meter replacement program on a fifteen (15) year replacement interval; North Dearborn will consider developing a plan for implementing emergency power, including cost estimates for the different options, in its next rate case; and North Dearborn will consider developing a water conservation plan.

7. **Commission Discussion and Findings.** The Commission begins with the general statement that settlements presented to the Commission are not ordinary contracts between private parties. *U.S. Gypsum Inc. v. Ind. Gas Corp.*, 735 N.E.2d 790, 803 (Ind. 2009). When the Commission approves a settlement, that settlement “loses its status as a strictly private contract and takes on a public interest gloss.” *Id.* (quoting *Citizens Action Coalition v. PSI Energy*, 664 N.E.2d 401, 406 (Ind. Ct. App. 1996)). Thus, the Commission “may not accept a settlement merely because the private parties are satisfied; rather [the Commission] must consider whether the public interest will be served by accepting the settlement.” *Citizens Action Coalition*, 664 N.E.2d at 406.

The Commission is not required to accept a settlement simply because the parties have agreed to it, and agreements filed by some or all of the parties must still be supported by probative evidence. *Id.* Furthermore, any Commission decision, ruling, or order, including the approval of a settlement,

must be supported by specific findings of fact and sufficient evidence. *U.S. Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coalition v. Public Serv. Co.*, 582 N.E.2d 330, 331 (Ind. 1991)). The Commission's own procedural rules require that settlements be supported by probative evidence. 170 IAC 1-1.1-17(d). Therefore, before the Commission can approve the Settlement Agreement, we must determine whether the evidence in this Cause sufficiently supports the conclusions that the Settlement Agreement is reasonable, just, and consistent with the purpose of Ind. Code ch. 8-1-2, and that such agreement serves the public interest.

Based on the evidence presented in this Cause, the Commission finds the Settlement Agreement represents a comprehensive resolution to the issues presented in this matter, is in the public interest, and should be approved in its entirety. We find, therefore, that North Dearborn should be authorized to incur long-term debt to Rural Development in an amount not to exceed \$1,400,000 at an approximate interest rate of 3.875% for a term not to exceed forty (40) years.

The parties agreed the Settlement Agreement should not be used as precedent in any other proceeding or for any other purpose, except to the extent necessary to implement or enforce its terms. Consequently, with regard to future citation of the Settlement Agreement, the Commission finds that our approval herein should be construed in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434, (IURC, March 19, 1997).

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

1. The Joint Stipulation and Settlement Agreement is hereby approved and the terms and conditions thereof are incorporated herein as part of this Order.
2. North Dearborn is hereby authorized to incur long-term indebtedness as provided in this Order.
3. North Dearborn shall make a filing with the Commission within thirty (30) days of closing on the financing to reflect the actual principal amount of the bonds, the interest rate of the debt, and the financing term.
4. This Order shall be effective on and after the date of its approval.

ATTERHOLT, BENNETT, LANDIS, MAYS AND ZIEGNER CONCUR:

APPROVED: FEB 13 2013

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



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

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF)
NORTH DEARBORN WATER CORPORATION,)
A NONPROFIT CORPORATION, FOR) CAUSE NO. 44248
AUTHORITY TO ISSUE LONG-TERM DEBT)

JOINT STIPULATION AND SETTLEMENT AGREEMENT

This Joint Stipulation and Settlement Agreement (“Settlement Agreement”) is entered into this 20th day of December, 2012, by and between North Dearborn Water Corporation (“North Dearborn”) and the Office of Utility Consumer Counselor (“OUCC”), who stipulate and agree for purposes of settling all matters in this Cause that the terms and conditions set forth below represent a fair and reasonable resolution of all issues in this Cause, subject to their incorporation in a final Indiana Utility Regulatory Commission (“Commission”) Order without modification or the addition of further conditions that may be unacceptable to either party. If the Commission does not approve the Settlement Agreement in its entirety and incorporate the conclusions herein in its final Order, the entire Settlement Agreement shall be null and void and deemed withdrawn, unless otherwise agreed to in writing by the parties.

Terms and Conditions of Settlement Agreement

1. Requested Relief. On September 13, 2012, North Dearborn initiated this Cause by filing a Verified Petition with the Commission requesting authority to issue long-term debt.
2. Settlement. Through analysis, discussion, and negotiation, as aided by their respective technical staff and experts, North Dearborn and the OUCC have agreed on terms and conditions set forth herein that resolve all issues between them in this Cause.

3. **Issuance of Debt.** The parties agree that North Dearborn should be authorized to issue long-term debt to the United States Department of Agriculture - - Rural Development ("Rural Development") in a total principal amount not to exceed \$1,400,000 at an interest rate of approximately 3.875%. If the actual interest rate for the Rural Development Debt is materially different than 3.875%, North Dearborn will file a true-up report with the Commission and adjust its rates accordingly.

4. **Expenditures from Debt Service Reserve.** If North Dearborn spends any of the funds from its Debt Service Reserve for any reason other than to make the last payment on the underlying debt, North Dearborn agrees to spend such funds for only the prepayment of principal and interest on any outstanding bond indebtedness, on capital projects, and/or on capital expenditures for the water utility (excluding tank maintenance and painting). Upon expenditure of any funds from its Debt Service Reserve, North Dearborn will provide a report to the Commission and the OUCC within five (5) business days after such expenditure that states: (i) how much North Dearborn spent from its Debt Service Reserve; (ii) why and on what it spent the funds from its Debt Service Reserve; (iii) a cite to and quote from any applicable loan documents that allow North Dearborn to spend funds from its Debt Service Reserve; (iv) how North Dearborn plans to replenish its Debt Service Reserve; and (v) any cost cutting activities North Dearborn has implemented to forestall spending funds from its Debt Service Reserve.

5. **Operational Matters.** North Dearborn agrees that it will, absent technological advances, consider its meter replacement on a fifteen (15) year replacement interval. In addition, North Dearborn will consider developing a plan for implementing emergency power, including cost estimates for the different options, for inclusion in its next rate case. Finally, North Dearborn will consider developing a water conservation plan.

6. Admissibility and Sufficiency of Evidence. The parties agree to stipulate to the admission of evidence of North Dearborn into the record of this proceeding without objection. The parties further agree that such evidence constitutes substantial evidence sufficient to support the Settlement Agreement and provides an adequate evidentiary basis upon which the Commission can make all findings of fact and conclusions of law necessary for the approval of this Settlement Agreement as filed.

7. Non-Precedential Effect of Settlement. The parties agree that the facts in this Cause are unique and all issues presented fact specific. Therefore, the Settlement Agreement shall not constitute nor be cited as precedent by any person or deemed an admission by any party in any other proceeding except as necessary to enforce its terms before the Commission or any court of competent jurisdiction. This Settlement Agreement is solely the result of compromise in the settlement process, except as provided herein, is without prejudice to and shall not constitute a waiver of any position that either party may take with respect to any issue in any future regulatory or non-regulatory proceeding.

8. Authority to Execute. The undersigned have represented and agreed that they are fully authorized to execute the Settlement Agreement on behalf of their designated clients who will hereafter be bound thereby.

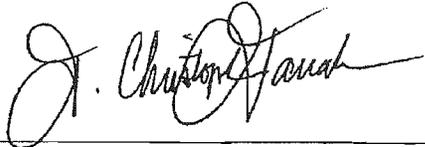
9. Proposed Order. The parties hereby approve and agree to execute a joint Proposed Order, the form of which is attached hereto as Exhibit A. The parties agree to execute and file any additional documents and promptly respond to any questions from the Commission to facilitate issuance of the Proposed Order in substantially the same form as attached.

10. Approval of Settlement Agreement in its Entirety. As a condition of this settlement, the parties specifically agree that if the Commission does not approve this Joint Stipulation and Settlement Agreement in its entirety and incorporate it into the Final Order as

provided above, the entire Settlement Agreement shall be null and void and deemed withdrawn, unless otherwise agreed to in writing by the parties. The parties further agree that in the event the Commission does not issue a Final Order in the form that reflects the Agreement described herein, the matter should proceed to be heard by the Commission as if no settlement had been reached unless otherwise agreed to by the parties in a writing that is filed with the Commission.

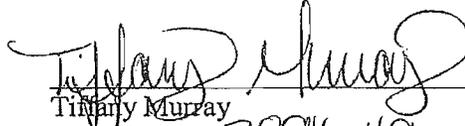
11. **No Other Agreements.** There are no agreements in existence between the parties relating to the matters covered by this Settlement Agreement that in any way affect this Settlement Agreement.

**NORTH DEARBORN WATER
CORPORATION**



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