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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF SULLIVAN-VIGO RURAL) CAUSE NO. 44366
WATER CORPORATION, INC. FOR)
AUTHORITY TO REFINANCE ITS)
INDEBTEDNESS) APPROVED:

SEP 25 2013

ORDER OF THE COMMISSION

Presiding Officers:

Carolene R. Mays, Commissioner
Marya E. Jones, Administrative Law Judge

On July 16, 2013, Sullivan-Vigo Rural Water Corporation, Inc. ("Petitioner") filed its Verified Petition with the Indiana Utility Regulatory Commission ("Commission"), seeking authority to refinance its indebtedness. On August 23, 2013, Petitioner prefiled Testimony and Exhibits of Bionca D. Gambill, President of Sullivan-Vigo Rural Water Corporation, Inc., and Steven K. Brock, Consultant with Therber Brock & Associates, constituting its Case-In-Chief. On August 29, 2013, the Indiana Office of Utility Consumer Counselor ("OUCC") prefiled the Testimony of Edward R. Kaufman, Chief Technical Advisor of the OUCC Water/Wastewater Division. On September 3, 2013, Petitioner prefiled Supplemental Testimony of Steven K. Brock. On September 12, 2013, in response to a Commission Docket Entry, Petitioner filed a Supplemental Exhibit.

Pursuant to notice given and published as required by law, proof of which was incorporated into the record by reference and placed in the official files of the Commission, an Evidentiary Hearing was held in this Cause on September 19, 2013 at 11:00 a.m. in Room 224, PNC Center, 101 West Washington Street, Indianapolis, Indiana. Petitioner and the OUCC were present and participated. The testimony and exhibits of Petitioner and the OUCC were admitted into the record without objection. No members of the general public appeared or sought to testify at the hearing.

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

1. **Statutory Notice and Commission Jurisdiction.** Notice of the hearing in this Cause was given and published by the Commission as required by law. Petitioner is a public utility as defined in Ind. Code § 8-1-2-1(a) and a not-for-profit utility as defined in Ind. Code § 8-1-2-125. Pursuant to Ind. Code § 8-1-2-78, the Commission has jurisdiction over Petitioner to refinance certain of its indebtedness. Therefore, this Commission has jurisdiction over the Petitioner and the subject matter of this cause.

2. **Petitioner's Characteristics.** Petitioner is an Indiana not-for-profit corporation organized and existing under the laws of the State of Indiana. Petitioner's principal office is located on U.S. Highway 41 South in Terre Haute, Indiana with a mailing address of P.O. Box 52, Pimento, Indiana 47866. Petitioner provides water service to approximately 760 customers in rural areas in Northwestern Sullivan and Southern Vigo Counties in Indiana.

3. **Relief Requested.** Petitioner seeks authority to refinance its indebtedness with the United States Department of Agriculture ("Rural Development") originally authorized by the Commission in Cause No. 42599 by Order dated June 23, 2004. Specifically, Petitioner seeks authority to restructure two (2) loans in the total amount of \$6,689,350 for a term of forty (40) years which will result in a reduction in the amount of the monthly loan payments from \$30,741 to \$20,738, and a reduction in the interest rate from 4.375% to 2.125%.

4. **Evidence Presented.**

A. **Petitioner's Evidence.** Bionca D. Gambill, President of the Board of Directors of Sullivan-Vigo Rural Water Corporation, Inc. testified in support of the Petition. Ms. Gambill began her testimony by describing her qualification and duties as President of the Petitioner's Board of Directors. After noting that she has served as President for twelve (12) years, Ms. Gambill testified she was involved in the preliminary engineering plan for the establishment of this water utility, the recruitment of membership, the procurement of easements and the application and approval of financing of the utility through Rural Development. Ms. Gambill testified that in addition to serving as President, she supervised and managed the operation of the utility as well as performed field work for the Petitioner since it began service in 2004.

Ms. Gambill stated Petitioner has been unable to make complete payments on its loans with Rural Development for several years. Ms. Gambill explained that in order for Petitioner to obtain its original financing with Rural Development, Petitioner had to procure 800 members committed to receive water service. Ms. Gambill testified that after water service became available approximately 150 of those customers elected not to hook on to the water service, but instead paid a monthly minimum payment for a period of twelve (12) months as required under the terms of membership. Ms. Gambill stated that after the initial twelve (12) month period, the loss of revenue resulted in Petitioner's inability to meet its original loan requirements. Ms. Gambill explained Petitioner has been in discussions with Rural Development for several years regarding renegotiation of its loan terms so that Petitioner could be in a position to make its annual debt service payment without raising rates and charges to its customers. Ms. Gambill explained that the proposed new loan terms will allow Petitioner to meet its annual debt service payment without raising rates and charges to its customers.

Mr. Steven K. Brock, consultant with Therber Brock & Associates also testified in support of the Petition. Mr. Brock noted his professional qualifications include holding a Certified Public Accountants Certificate and more than twenty-five (25) years experience with utilities, their rate structures and their project financings. Mr. Brock stated Therber Brock &

Associates was retained to assist the Petitioner in renegotiating the terms of its outstanding loans with Rural Development.

Mr. Brock testified that Petitioner's collections have been insufficient to allow Petitioner to meet its annual needs for operation and maintenance, extensions and replacements, working capital, debt service and debt service reserve for several years. He stated Petitioner is in arrears on its principal and interest payments to Rural Development as a result. Mr. Brock testified Petitioner and Rural Development have come to an agreement on modifying the terms of Petitioner's loans as follows: 1) increasing the principal balance of the original loans to reflect the amounts of unpaid principal and interest on the original loans; 2) amortizing the loans over forty (40) years rather than the remaining term of the original loans; and 3) lowering Petitioner's interest rate on the new loans from 4.375% to 2.125%. Mr. Brock testified that refinancing the Rural Development loans will change Petitioner's monthly loan payment from \$30,741 to \$20,738, resulting in a monthly savings for the Petitioner of \$10,003.

Mr. Brock testified that the modified loan terms will not require any increase in Petitioner's rates and charges. Mr. Brock also noted Petitioner believes its rates and charges for water service are as high as its customers can pay and that any increase in rates would be offset by an increase in delinquent and uncollectible accounts. Mr. Brock explained that under the Petitioner's current rates and charges, the new loan terms reduce the Petitioner's annual debt service payments which will allow Petitioner to pay its annual operation and maintenance, working capital, extensions and replacements, and debt service reserve. Mr. Brock stated the reductions in debt service under the refinanced terms are not, however, sufficient to enable the Petitioner to reduce its rates and charges for water service and Petitioner is not planning on either increasing or decreasing its current level of rates and charges. Mr. Brock testified both Petitioner and Rural Development have analyzed Petitioner's expense and expenditure structure and believe that the reduction in annual debt service payments will be sufficient to allow Petitioner to meet all of its financial obligations under the existing rate structure.

Mr. Brock stated Petitioner requests the Commission to grant it financing authority quickly so that the Petitioner can close its new loan with Rural Development prior to Rural Development's anticipated interest rate change on October 1, 2013. Mr. Brock opined that interest rates in the general market are trending upwards and it is widely believed that Rural Development's interest rate will increase on October 1, 2013. Mr. Brock noted that Petitioner's current interest rate is 4.375% and the interest rate currently available from Rural Development is 2.125%. Mr. Brock testified Rural Development is a state administered financing program with a maximum loan term of forty (40) years. He stated the interest rates available from Rural Development are subsidized and below what would be available in the open market. He noted that loan terms of up to twenty (20) years can be found in the general market but loan terms in excess of ten (10) years can be very difficult to obtain. He stated further because Petitioner has missed loan payments and is behind on loan payments, it would be difficult for Petitioner to obtain financing in the general market. He opined that if Petitioner could find financing, it would expect to have to pay a higher than market interest rate due to its perceived higher risk of missed payments. Mr. Brock testified the terms of the new Rural Development loans represent the best

financing terms available to Petitioner and will produce the lowest annual debt service payments that are currently available in the market. Mr. Brock stated Petitioner's financing method is also in the best interest of Petitioner's ratepayers.

B. OUCC's Evidence. Mr. Edward Kaufman, Chief Technical Advisor of the OUCC Water/Wastewater Division, testified that based upon review of the evidence, the OUCC supports the Petitioner's request for financing authority and also recommends various reporting requirements.

Mr. Kaufman testified that Petitioner seeks authority to refinance its existing long-term debt, but Petitioner's pre-filed testimony does not state the total amount Petitioner plans to borrow. Mr. Kaufman stated he spoke with Petitioner's witness, Steven Brock, who clarified Petitioner seeks authority to borrow funds to refinance two loans totaling \$6,689,350. Mr. Kaufman stated the terms of the proposed debt are reasonable in that Petitioner will reduce the monthly payments on its long term debts from \$30,741 to \$20,738, resulting in a savings of \$10,003 per month or \$120,036 per year.

Mr. Kaufman testified that Petitioner's testimony failed to mention a debt service reserve. He explained that Rural Development typically requires borrowers to fund a debt service reserve over ten (10) years equal to one year's annual debt service so that Petitioner would need to deposit in its debt service reserve account \$24,886 per year or \$2,074 per month.

Mr. Kaufman testified that the OUCC recommends several reporting requirements. He stated that as soon as reasonably possible after issuing its proposed debt, Petitioner should provide notice of the issuance to the Commission and the OUCC, which sets forth the terms of the new loan. He testified if Rural Development requires Petitioner to establish a debt service reserve, and Petitioner does not pre-fund the reserve, then each month Petitioner should deposit \$2,074 into a restricted debt service reserve account. He noted further if Petitioner spends any of the funds from its debt service reserves for any reason other than to make the last payment on its respective debt issuance, Petitioner should be required to provide a report to the Commission and the OUCC within five business days. He stated the report should include how much Petitioner spent from its debt service reserve, explain why funds were spent from the debt service reserve, provide a cite to any applicable loan documents that allow funds to be spent from the debt service reserve, describe Petitioner's plans to replenish its debt service reserve, and explain any cost-cutting activities it has implemented to forestall spending funds from its debt service reserve. Mr. Kaufman testified this reporting requirement should also apply if Petitioner fails to make its required monthly deposit.

Mr. Kaufman testified the OUCC recommends the Commission approve Petitioner's proposed refinancing for no more than \$6,700,000. He explained the grant of such approval should be conditioned upon Petitioner's compliance with a requirement that within thirty (30) days of closing on the approved debt, Petitioner shall file a report with the Commission and serve a copy on the OUCC explaining the terms of the new loan including the interest rate and the maturity date. Additionally, Mr. Kaufman testified the OUCC recommends that financing

authority granted by the Commission expire six months from the date it issues a final order in this Cause, but this time limit can be extended by agreement of the parties followed by an order by the Commission.

C. Petitioner's Supplemental Evidence. Mr. Brock supplemented his direct testimony to clarify the relief Petitioner seeks and to contrast Petitioner's requested relief with its current loan terms. Mr. Brock stated Petitioner requests authority from the Commission to refinance two currently outstanding loans with Rural Development. He testified these loans were originally issued in the total amount of \$6,816,000 in June of 2004 with an interest rate of 4.375% for a forty (40) year loan term and monthly principal and interest payments of \$30,741. Mr. Brock noted that because Petitioner is in arrears in its payments on its original loans, the refinanced loan will contain Petitioner's missed payments. Mr. Brock testified the refinanced loan will be issued in the total amount of \$6,689,350 with an interest rate of 2.125% for a forty (40) year loan term and monthly principal and interest payment of \$20,738. He noted these loan terms for the refinanced loan assume a payoff date on the original Rural Development loans of September 25, 2013. Mr. Brock testified that the savings in monthly principal and interest payments will allow Petitioner to meet its annual revenue requirements without raising its current level of rates and charges.

5. Commission Discussion and Findings. Pursuant to Ind. Code § 8-1-2-78, the Commission has the authority to approve or disapprove a financing proposal by a public utility to issue bonds, notes or other evidence of indebtedness, payable more than one year from the execution thereof for the purpose of, and to the extent required for, obtaining funds sufficient for the discharge or lawful refunding of its obligations. The Commission must determine whether the proposed financing program is in the public interest and reasonably necessary in the operation and management of the business of the utility in order that the utility may provide adequate service and facilities.

We find that Petitioner's request for financing authority is in the public interest and is reasonably necessary in the operation and management of its business so that Petitioner may provide adequate service and facilities. We further find that Petitioner's proposal to refinance existing long-term debt results in a lower interest rate and, therefore, lower debt costs, and allows Petitioner to continue to provide safe, reliable service to its customers without an increase in its rates and charges. However, in the interest of judicial economy, and to allow the Petitioner to move forward expeditiously, we find that placing a cap of 2.125% on the interest rate may prove burdensome to Petitioner. We are mindful of the facts in Cause No. 44137, involving the City of Evansville, where an Order establishing a cap on the interest rate required the parties to return to the Commission when interest rates unexpectedly increased and the Commission to enter a Supplemental Order approving the financing at the lowest market rate reasonably achievable. Therefore, we find that Petitioner's proposed financing should be at the lowest interest rate reasonably offered by Rural Development. Additionally, we find the reporting requirements recommended by the OUCC to be reasonable.

Accordingly, we authorize Petitioner to refinance two currently outstanding loans with Rural Development in an amount not to exceed \$6,700,000 for a period of years not to exceed forty (40) years at the lowest interest rate reasonably offered by Rural Development.

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

1. Sullivan-Vigo Rural Water Corporation, Inc. is authorized to refinance its debt with Rural Development in an amount not to exceed \$6,700,000.00 for a period of years not to exceed forty (40) years at the lowest interest rate reasonably offered by Rural Development.

2. Sullivan-Vigo Rural Water Corporation, Inc. shall within thirty (30) days of the closing on said refinanced debt, file a report with the Commission describing the final terms of such debt.

3. Sullivan-Vigo Rural Water Corporation, Inc. shall follow the recommendation proposed by the OUCC requiring Petitioner to report to the Commission and the OUCC regarding expenditures from its debt service reserve.

4. Sullivan-Vigo Rural Water Corporation, Inc.'s authority to refinance this debt shall expire six (6) months from the date following the date of this Order, unless the parties request an extension at least ten (10) days prior to the date of expiration. Any request for extension must be for good cause and may be addressed by the Presiding Officers.

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

ATTERHOLT, LANDIS, MAYS AND ZIEGNER CONCUR; BENNETT ABSENT:

APPROVED: SEP 25 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**