

ORIGINAL

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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE INDIANA )  
UTILITY REGULATORY COMMISSION'S )  
INVESTIGATION OF MATTERS RELATED )  
TO THE OWNERSHIP OF THE WATER )  
SYSTEM SERVING THE TOWN OF )  
BEVERLY SHORES AND SURROUNDING )  
PROPERTY AND OPERATED BY THE )  
MICHIGAN CITY MUNICIPAL WATER )  
WORKS, THE ISSUANCE OF BONDS TO )  
FINANCE THE WATER SYSTEM, AND THE )  
CHARGES TO CONNECT TO THIS WATER )  
SYSTEM, PURSUANT TO I.C. §§ 8-1-2-1, 8-1- )  
2-68, 8-1-2-69, ET SEQ. )

CAUSE NO. 43253

APPROVED: JUN 22 2011

**BY THE COMMISSION:**

**Carolene Mays, Commissioner**  
**Angela Rapp Weber, Administrative Law Judge**

On January 22, 2010, the Department of Water Works of the City of Michigan City ("Department") filed with the Commission its Verified Petition to Reopen Investigation and Enforce Terms of Settlement Agreement ("Verified Petition"). The Verified Petition stated that the Indiana Dunes National Lakeshore ("Indiana Dunes") contacted the Department and the Town of Beverly Shores, Indiana (the "Town" or "Beverly Shores") in October 2009 requesting water service for the Indiana Dunes campground. Indiana Dunes wanted to install a 6" meter tap for the extension to enable Indiana Dunes to provide fire protection services for its campground. According to the Verified Petition, the Department and Beverly Shores agreed to the proposed extension. However, Beverly Shores is requiring that Indiana Dunes pay Beverly Shores an access fee of \$18,000 for each inch of tap larger than 1" in diameter. Thus, the Indiana Dunes' requested 6" tap would cost \$108,000. The Department stated that the Town's requirement is in violation of the Settlement Agreement approved by the Commission in this Cause in an Order dated January 16, 2008 and requested the Commission to reopen its investigation and enforce the terms of the Settlement Agreement for connections to the Town's system.

In accordance with 170 IAC 1-1.1-15 and pursuant to proper notice given as provided by law, a Prehearing Conference was held on March 8, 2010 in Room 224, 101 West Washington Street, Indianapolis, Indiana at 1:30 p.m. The Department, the Town, and the Office of Utility Consumer Counselor ("OUCC") appeared and participated at the Prehearing Conference by counsel. The Presiding Administrative Law Judge granted the Department's Verified Petition to reopen the matter and the parties agreed to a procedural schedule. On March 17, 2010, the Commission issued a Prehearing Conference Order setting forth the agreed-upon procedural schedule.

Pursuant to the terms of the Prehearing Conference Order, the Department prefiled the Direct Testimony of Randall E. Russell and Garry M. Traynham on March 19, 2010. On May 21, 2010, the Town prefiled the Direct Testimony and Exhibits of Grant P. Ireland, Andy Himan, and John D. Julien, C.P.A. The OUCC prefiled the Testimony of Harold L. Rees on July 12, 2010, and the Department prefiled the Rebuttal Testimony of Randall E. Russell, Garry M. Traynham, and James H. Maurer, P.E. on July 20, 2010.

Pursuant to proper notice given as provided by law, an Evidentiary Hearing in this Cause was held in Room 224, 101 West Washington Street, Indianapolis, Indiana at 10:00 a.m. on September 8, 2010. The Evidentiary Hearing was continued to and reconvened on September 21, 2010. The Department, the Town, and the OUCC appeared and participated in the Evidentiary Hearing. No members of the general public appeared. The Direct Testimony and Exhibits of the Department, the Town, and OUCC were offered and admitted into evidence without objection. The Department's Rebuttal Testimony also was offered and admitted into evidence without objection.

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

**1. Notice and Jurisdiction.** Due, legal, and timely notice of the public hearings conducted in this Cause was provided as required by law. The Department operates, manages and controls a municipal water system owned by the City of Michigan City, Indiana ("Michigan City"). Thus, the Department is a municipal utility, as defined by Indiana Code § 8-1-2-1.

The Town owns and controls plant and equipment for the delivery of water utility service to the public in and around Beverly Shores, Indiana. Thus, the Town is municipal utility pursuant to Indiana Code § 8-1-2-1 and the Commission's Order issued in this Cause on January 16, 2008. See *Town of Beverly Shores*, Cause No. 43253, 2008 Ind. PUC LEXIS 25, at \*31 (IURC Jan. 16, 2008).

Subsequent to the Commission's January 16, 2008 Order, the Town withdrew from the Commission's jurisdiction concerning the approval of rates, charges, and evidence of indebtedness pursuant to Indiana Code § 8-1.5-3-9.1. However, the Stipulation and Settlement Agreement Among All Parties ("Settlement Agreement") approved by the Commission's January 16, 2008 Order provides that the "provisions of this Agreement shall be enforceable by any Party, in any tribunal of competent jurisdiction, including but not limited to the Commission." Settlement Agreement at 10.

In addition, pursuant to Indiana Code § 8-1-2-5, the Commission retains jurisdiction over disputes concerning utilities where such utilities share one or more connections. The Commission's authority in these matters is retained even if one of the utilities involved has opted out of the Commission's jurisdiction. See, e.g., *Kankakee Valley Rural Elec. Mbrship. Corp. v. United Tel. Co. of Ind. Inc.*, 843 N.E.2d 987 (Ind. Ct. App. 2006). In this Cause, a regulated utility, the Department, has petitioned the Commission to resolve a dispute with another utility with which it shares a connection, the Town.

Accordingly, the Commission has jurisdiction over the parties and the subject matter of this proceeding.

2. **Parties' Characteristics.** The Department is a municipal water utility with a business office located at 532 Franklin Square, P.O. Box 888, Michigan City, Indiana. It furnishes water to the public within and around Michigan City, and collects rates and charges for the use of and service rendered by the water system. The Town is a municipal water utility that owns and controls equipment used for delivery of water either directly or indirectly to the public in and around the Town of Beverly Shores, Indiana. However, the Department operates, manages, and oversees the water system owned by the Town pursuant to an Operating Agreement executed between the Town and the Department.

3. **The Initial Investigation and Settlement Agreement.** The initial investigation began with a complaint submitted by Mr. Robin S. Hunden to the Commission's Office of General Counsel on May 5, 2006 concerning fees associated with connection to the Town's water system. In response to Mr. Hunden's complaint, the Commission issued an Order on April 4, 2007, which opened an investigation to examine the terms of Mr. Hunden's proposed connection and the manner in which it funded its water grid system. On August 24, 2007, the Town, Mr. Hunden, the Department, and the OUCC jointly filed the Settlement Agreement.

The Settlement Agreement generally provided that out-of-Town property taxpaying users would pay the same municipal water access fee as in-Town property owners (i.e., \$5,000), as well as a water system tax calculated in the same manner as it is for in-Town owners of taxpaying properties. The Town agreed to send a bill to the owners of out-of-Town taxpaying properties semi-annually at the same time property tax bills are mailed. The Settlement Agreement further provided that owners of non-taxpaying properties, whether located in-Town or out-of-Town, must pay a one-time municipal access fee of \$18,000 as a substitute for the water system tax. A copy of the Town's municipal water access fee structure as set forth in the Beverly Shores Code of Ordinances § 50.02 was attached to the Settlement Agreement as Exhibit B.

4. **Relief Requested.** In its Verified Petition, the Department requests the Commission to re-open the investigation in this Cause and enforce the terms of the Settlement Agreement. Specifically, the Department requests the Commission to require Beverly Shores to adhere to the terms of the Settlement Agreement for all future connections to the Beverly Shores system at the dollar amounts agreed upon by the parties to the Settlement Agreement. For Indiana Dunes, the Department states that this amount would be a one-time charge of \$18,000 for its proposed 6" connection to the Beverly Shores system.

5. **Evidence of the Parties.**

A. *The Department's Case-in-Chief.* Mr. Randall E. Russell testified that he has been the Superintendent of the Department since 1987, and his duties include project overview and general supervision of the Department filtration, distribution, and administration areas. Mr. Russell said he is familiar with and testified in the original proceedings in this Cause in 2007. He testified that the Cause was eventually settled and memorialized in the Settlement Agreement between all parties to the proceeding, including Beverly Shores and the Department. He further stated the Settlement Agreement was approved by an Order of the Commission dated January 16, 2008.

Mr. Russell said the Department believes all matters concerning the cost to connect to the Beverly Shores system had been resolved by the Settlement Agreement and Final Order. Per the terms of the Settlement Agreement and January 16, 2008 Order, a connection or access fee structure had been agreed to, including an amount of \$18,000 for out-of Town non-taxpaying property owners. Mr. Russell testified the Town advised the Department it would require Indiana Dunes to pay an access fee of \$18,000 for each inch of tap larger than 1" in diameter. He explained that since Indiana Dunes and the Department anticipate a 6" meter tap will be required, the access fee for Indiana Dunes would be \$108,000, which is \$90,000 more than what was agreed upon in the Settlement Agreement. Mr. Russell testified the Department filed the Petition after repeated attempts to resolve this issue with Beverly Shores were unsuccessful.

Mr. Russell stated the Department is concerned about the access fees Beverly Shores charges because, pursuant to the Operating Agreement, the Department operates, controls, manages, and oversees in all respects the Beverly Shores water system and will eventually own it. He said any customer connected to the Beverly Shores system, whether now or in the future, receives water from the Department, is billed by the Department, receives service from the Department, and interacts in all respects with the Department as to water service. Pursuant to the Operating Agreement, Mr. Russell testified, the Department is the sole provider of water service in and around the Beverly Shores area. He testified that when the actions of the Town prevent or impair the Department's ability to provide service, then the Department has an interest.

Mr. Russell testified Indiana Dunes would be a customer of the Department and served by the Department except for the fact that Beverly Shores has refused to allow Indiana Dunes to connect to the Beverly Shores system for the \$18,000 access fee. As a result, the Department is not able to serve Indiana Dunes or proceed with an extension from the Beverly Shores system to serve Indiana Dunes and other potential customers. He said this results in a loss of revenue for the Department, impedes expansion of the Department's services, and prevents growth from the connection to the Beverly Shores system, which will be owned by the Department. He also stated confusion is created for customers who are served by the Department through the Beverly Shores water system since there is now a question of how much it will cost the customer to receive service—an amount pursuant to the Settlement Agreement or an amount determined by Beverly Shores for a particular customer.

Mr. Russell said the Settlement Agreement sets forth the agreed upon access fees Beverly Shores may charge for connections to its system. According to Mr. Russell, the access charge for Indiana Dunes is \$18,000. Beverly Shores is now seeking to charge something other than what was agreed upon in the Settlement Agreement. In Mr. Russell's opinion, the \$108,000 charge for Indiana Dunes' connection to the water system proposed by Beverly Shores is not fair and equitable. The Department prepared an estimate regarding the actual cost for the connection, which amounted to \$17,823. However, Mr. Russell explained that there is no actual cost to the Town for the Indiana Dunes' connection because the Department and Indiana Dunes would share in the cost of the main extension. Indiana Dunes would also pay to the Department the actual cost of connection in the amount of \$17,823.

In response to a Data Request submitted by the Town in July 2010, the Department advised the Town that there were "2-3 homes located outside of Beverly Shores that could be connected to the proposed main," in addition to a church. Respondent's Ex. CX-7. During the September 8, 2010 Evidentiary Hearing, Mr. Russell testified that the main may be used to

provide service to an additional “two or three” homes beyond those originally identified in discovery. Tr. at A-18 – A-19.

Mr. Russell testified that the Beverly Shores access fee, as explained in the Settlement Agreement, is a proxy or substitute for the total amount of water system tax a typical property taxpaying customer would pay over the life of the State Revolving Loan Fund (“SRF Loan”) used to finance the Beverly Shores water system. He testified that since the SRF Loan is payable from property taxes of in-Town property owners, the access fee is designed to provide a share of that cost from out-of-Town and non-taxpaying property owners, such as Indiana Dunes. The access fee is not based upon the cost of connecting to the Beverly Shores system. Rather, it is designed to recoup a share of the original cost of the Beverly Shores system financed with the SRF Loan from users who otherwise would not pay property taxes in Beverly Shores (e.g., property owners located outside of the Town and exempt entities, such as Indiana Dunes and churches).

Mr. Russell stated the Indiana Dunes connection would benefit the Beverly Shores area by (1) ensuring that Indiana Dunes would have adequate water for fire protection purposes; (2) providing Beverly Shores with \$18,000 for the connection which it can apply to the SRF Loan; and (3) as a result of the extension required for the water service to the Indiana Dunes campground, enabling other potential customers around the Beverly Shores area to connect. He also testified that since the SRF Loan has not paid for this extension, which will be paid for by the Department and Indiana Dunes, not Beverly Shores, the \$18,000 access fee should not apply to connections to the extension or be paid to Beverly Shores. Mr. Russell said the Department is requesting the Commission to issue an Order requiring Beverly Shores to adhere to the terms of the Settlement Agreement for the Indiana Dunes’ connection and all future connections to the Beverly Shores System at the dollar amounts agreed upon by the parties in the Settlement Agreement (for Indiana Dunes, \$18,000).

Mr. Traynham testified that he has been the Deputy Superintendent for Indiana Dunes since 1997. He said Indiana Dunes is a unit of the National Park Service within the Department of the Interior and surrounds Beverly Shores. On October 16, 2009, Indiana Dunes contacted the Department and Beverly Shores seeking water service for the Indiana Dunes campground. Mr. Traynham testified Indiana Dunes sought municipal water service to provide fire protection services for its campground facilities and limited domestic use, which included two small bathhouses, a registration building, and five hose bib connections. However, the primary purpose for the 6” connection is for the provision of fire protection services for the campground. According to Mr. Traynham, the 6” meter size is recommended by the Department for fire protection.

Mr. Traynham stated the Town is requiring Indiana Dunes to pay a \$108,000 access fee to connect to the Beverly Shores system, which is \$18,000 per inch of meter size connection. He said Indiana Dunes previously connected two of its properties to the Beverly Shores water system and each time paid the \$18,000 access fee per the terms of the Settlement Agreement. In each case, the properties required a 1” or less meter connection. This was the first time the Town required Indiana Dunes to pay an access fee other than \$18,000.

Mr. Traynham stated that to construct the extension and connect to the Beverly Shores system, Indiana Dunes anticipated it would pay the estimated amount of (1) \$17,823 tap in fee to

the Department, (2) \$90,591 for the cost of materials for the extension, and (3) \$18,000 to Beverly Shores for the access fee. He stated Beverly Shores would not share in the cost of the extension or tap in/connection to the system. He did not anticipate Indiana Dunes would use a substantial amount of water once connected to the Beverly Shores system.

*B. The Town's Case-in-Chief.* Mr. Grant P. Ireland, President of the Beverly Shores Town Council, provided testimony on behalf of the Town. He also provided testimony in this Cause in 2007.

Mr. Ireland stated the Town financed the Beverly Shores water system with the issuance of general obligation bonds sold to the SRF program. The Beverly Shores system is operated and maintained by the Department. He testified that the Town installed the Beverly Shores system to provide water to its residents. Approximately 500 families reside in Beverly Shores.

He further explained the Town levies a tax on taxpaying properties located in the Town each year to pay for the semi-annual installments due each year on the bonds to the SRF program. When the bonds are retired, the Town's title and interest in the Beverly Shore water system will be transferred to the Department. He stated the Town does not sell water to customers or otherwise operate the Beverly Shores system because these functions are performed by the Department pursuant to the Operating Agreement.

Mr. Ireland testified the Town did not originally permit out-of-Town customers to connect to the system because its primary purpose was to protect the health and safety of residents. However, the Town was mindful that some owners of properties located outside the Town were experiencing the same water quality problems as owners of properties within the Town, and the Town wanted to find a way to permit such non-resident property owners to connect to the system. According to Mr. Ireland, the Town struggled to find a mechanism to ensure that out-of-Town homeowners and owners of non-taxpaying properties were given access on terms that are substantially equivalent to those applicable to in-Town property owners who are paying taxes to pay for the system. Ultimately, the Town developed the mechanism incorporated in the Settlement Agreement approved by the Commission.

He further testified the Settlement Agreement provides that owners of non-taxpaying properties, whether located inside or outside of the Town, must pay a one-time municipal access fee of \$18,000. Mr. Ireland said that this amount was intended to be the equivalent of the average amount paid by in-Town taxpaying property owners over the life of the bonds. Additionally, the Town assumed the \$18,000 fee for non-taxpaying property owners authorized by the Settlement Agreement would be applicable to 1" taps or something equivalent thereto. Mr. Ireland testified the fee structure in the Settlement Agreement was intended for homeowners, small businesses, and churches, and at the time the Settlement Agreement was negotiated, the Town did not foresee any possibility that it would ever be necessary to adjust its access fee or develop an access fee for a much larger entity using anything more than a 2" tap.

Mr. Ireland stated the Town's understanding of the tap size is reflected in the Settlement Agreement. The Beverly Shores Code of Ordinances § 50.02 was attached to the Settlement Agreement as Exhibit B and provides, "Homeowners have the option of up-sizing service, during installation from a 3/4-inch/5/8-inch meter to a 1-inch meter at the cost, which may be amended from time to time by the Town Council of \$200." As a result, Mr. Ireland stated the Settlement

Agreement contemplated taps roughly 1” in diameter. The portion of the Ordinance concerning the ability to upsize to a 1” tap is included in the Town’s revised rate schedule consistent with the Settlement Agreement. Mr. Ireland testified the Town did not expect to receive a request for anything more than a 2” tap.

Mr. Ireland testified the Town approached Indiana Dunes to see if it wanted to be involved in the development and installation of the Beverly Shores system for fire protection and other services. Indiana Dunes declined to participate and help pay for the installation of the water system. He testified that at the time the Settlement Agreement was executed, the only needs of Indiana Dunes were assumed to be for its office and the single family World’s Fair Homes located on the Indiana Dunes’ property.

Mr. Ireland said the Town responded to Indiana Dunes’ request to connect to the water system in October 2009 with a proposed fee of \$108,000, which is the product of multiplying \$18,000 by six—the number of inches of Indiana Dunes’ proposed tap. He testified the Town has not adopted a rate for the 6” tap by Ordinance. After the Town sent the tap fee proposal to Indiana Dunes, the Department filed a complaint with the Commission.

Mr. Ireland stated he does not believe the \$18,000 fee proposed by Indiana Dunes and the Department is consistent with the Settlement Agreement. He explained the vast majority of taxpaying property owners have paid a tap-in fee for a connection of 1” or less. Permitting Indiana Dunes to pay \$18,000 for a larger tap diminishes the Town’s attempt to achieve substantial equivalency between the amount paid by an in-Town property owner and an owner of non-taxpaying property. He testified it would be unreasonable and inequitable to allow an out-of-Town customer to connect to the Beverly Shores system with a 6” tap for the same cost as a 1” tap or less.

Mr. Ireland noted John Julien, C.P.A., determined that granting Indiana Dunes access to the system through a 6” tap is approximately the equivalent of allowing fifty new customers to access the system. Mr. Ireland, therefore, testified that a municipal water access fee much greater than \$108,000 may be appropriate. He stated, however, that if the Settlement Agreement is the only guide, it provides two clear principles: (1) the connection size contemplated by the Settlement Agreement is 1” and (2) the municipal water access fee specified is \$18,000. Mr. Ireland testified that requiring \$18,000 be paid for each full inch of tap size is consistent with these principles.

Mr. Ireland testified Indiana Dunes’ proposed connection could seriously impair the Town’s ability to provide effective fire protection to its residents. He testified that in the event of a fire on Indiana Dunes’ property, the Town would not be able to effectively fight a fire in Town because of a loss in water pressure. Also, Mr. Ireland explained there are currently over 100 improved properties not yet connected to the system, and the Town has room for growth. The addition of homes and small-scale commercial businesses is possible within the Town. Indiana Dunes’ connection will use capacity the Town could otherwise use to accommodate future growth. Mr. Ireland said another concern is that Indiana Dunes’ proposed main extension could provide third parties access to the Town’s system without those parties paying for that access.

Mr. Ireland noted that improving fire protection was one of the main reasons the Town decided to invest in the water grid system. If the Town is forced to connect Indiana Dunes to the system, one of the benefits of the Town's investment will be substantially diminished. Further, Mr. Ireland said the Operating Agreement provides that no extension costs beyond the initial installation cost of the water grid system shall be the Town's responsibility. Since the Department requested to extend the Town's system in order to service potential new users, it is obligated to pay the cost of upsizing the Town's system to ensure that new users can be added without adversely impacting the use of the Town's system by its residents. Mr. Ireland stated costs associated with out-of-Town users that require upsizing or capacity increases should be borne by the Department or the particular users, not the Town's residents.

Mr. Ireland concluded by testifying that he would ask the Commission to respect the Town's decision to not allow Indiana Dunes to connect to the Beverly Shores System; however, if the Commission finds that Indiana Dunes should be permitted to connect, then the Commission should order Indiana Dunes or the Department to pay the costs to upgrade the Beverly Shores system to ensure adequate flow and pressure. He said the Town would request a booster pump station be constructed and installed at no cost to the Town, that Indiana Dunes be required to pay an access fee of \$580,000 for the proposed 6" connection and that the Commission prohibit Indiana Dunes or the Department from allowing any customers to gain access to the Beverly Shores system at a point outside of the Town without paying the access fee.

Beverly Shores Fire Chief, Andy Himan, also testified on behalf of the Town. Mr. Himan testified that the "Beverly Shores Fire Flow Hydraulic Analysis" prepared by James Maurer of Haas & Associates shows that Indiana Dunes' proposed connection to the system could impair the Town's ability to provide effective fire protection to its residents. Mr. Himan noted the analysis shows fire hydrant pressure could be as low as 15.7 psi when fire hydrants are used at Indiana Dunes and in the Town simultaneously. According to Mr. Himan, the Town will not be able to effectively fight a fire at this pressure. Mr. Himan noted Mr. Maurer indicated a water system's residual pressure in the vicinity of a fire hydrant should be a minimum of 20 psi. According to Mr. Himan, allowing hydrant pressure to fall as low as 15.7 psi is contrary to the standard cited by Mr. Mauer.

Mr. Himan said the Beverly Shores Fire Department generally is the first responder to fires at the campground given its proximity in comparison to the Indiana Dunes' fire fighting crew. In 2009, the Town's Fire Department made 108 emergency runs to the campground in response to various types of calls. Generally, the Fire Department responds to two fires per year at the campground, which are typically brush fires. Mr. Himan testified the typical response to a fire at the campground is to send a wildland urban interface engine and water tender. A wildland urban interface engine carries a 250-gallon water tank and the Town's water tender carries 1,800 gallons of water.

According to Mr. Himan, Indiana Dunes currently has adequate water for fire protection purposes. A fire hydrant is located approximately one-half mile from the campground. It takes approximately five minutes to connect a 5" hose to the hydrant, during which time water from the wildland urban interface engine and water tender would be used to fight the fire. Mr. Himan further testified that even if hydrants were constructed in the campground, the Town's Fire Department still would respond with the same equipment. Mr. Himan said a typical brush fire

does not require the use of a fire hydrant. In Mr. Himan's opinion, Indiana Dunes should install 4" or 5" wells for fire suppression purposes because of the water table located in the area of the campground.

Mr. Himan said allowing Indiana Dunes to tap into the Town's system also could affect the Town's insurance rating. Mr. Himan explained the Insurance Service Organization ("ISO") evaluates the Town's fire protection capabilities on a scale of one through ten and recently rated the Town as a six. Mr. Himan stated that if pressure were to decrease as a result of Indiana Dunes' proposed connection, the Town's ISO rating would decline, affecting the Town's insurance rates.

Mr. Himan concluded by stating that if Indiana Dunes were to connect to the Town's system, measures could be taken to protect the Town from diminished fire fighting capabilities. For example, a booster pump station could be used to provide additional water pressure during a fire fighting event. Mr. Himan believed the Department and possibly Indiana Dunes should be required to pay for necessary equipment to ensure that, in the event of simultaneous fires in the Town and at Indiana Dunes, the flow on the Town's system is the same today as in the future.

John D. Julien, a C.P.A. and a Partner in the firm of H. J. Umbaugh & Associates, was retained by the Town to calculate a fair and proportionate charge for Indiana Dunes' access to the water grid. He said the pertinent facts for establishing an appropriate fee are the costs of providing the service to which the fee relates and the customer base over which the costs are collected. Also, the number of physical connections the distribution system serves is not as important as the water usage of the connected customers. Mr. Julien explained a large water customer takes more capacity than a small water customer. He stated there is a ceiling on the number of customers that can be connected to the Town's system and when it reaches full capacity, the Town will not be able to generate new access fees. Accordingly, Mr. Julien disagreed with the Department's premise that the Town will not actually incur costs in connecting Indiana Dunes to its system. However, the cost will not be to the Town but to its customers and ratepayers. In Mr. Julien's opinion, new customers should pay in proportion to the capacity they take from the system so that existing customers do not pay a disproportionate share of the cost to build the water distribution system.

Mr. Julien explained the charge for non-property taxpaying residential customers was designed to approximate the amount of property taxes that will be paid by the residents of the Town to finance the system, which amounts to approximately \$18,000 over the life of the SRF loan. However, Mr. Julien stated it is not appropriate to charge an \$18,000 access fee for users with large tap sizes. Mr. Julien said the appropriate access fee for a non-taxpaying customer seeking a 6" connection would be \$578,500, based on the fact that such a customer could use the capacity of fifty customers.

C. *The OUCC's Case-in-Chief.* Harold L. Rees, Senior Utility Analyst for the OUCC's Water/Wastewater Division, presented two alternative methods for determining the amount of the one-time municipal access fee. Mr. Rees did not address whether the Settlement Agreement limits the water access fee to \$18,000 regardless of the size of the meter installed. Mr. Rees stated that if the Commission determines the access fee is not limited to \$18,000

regardless of meter size, his testimony provides alternative methods for determining the number of equivalent dwelling units (“EDUs”) to be applied to the water access fee.

Mr. Rees’s first alternative method for calculating the access fee was based on his determination that the average daily demand Indiana Dunes would place on the Town’s system would be approximately 2,133 gallons per day (“gpd”). According to Mr. Rees, for the purposes of planning capacity, a single-family home generally uses 310 gpd, pursuant to 327 IAC 3-6-11. Mr. Rees divided 2,133 gpd by 310 gpd, which equates to 6.88, or seven EDUs when rounded. Mr. Rees testified that if the water access fee is not limited to \$18,000 per connection but is considered to be \$18,000 per EDU, the resulting water access fee under this allocation method would be \$126,000 (\$18,000 per EDU x seven EDUs). With respect to the first alternative, Mr. Rees considered the purpose for upgrading the water system at Indiana Dunes. The system in Indiana Dunes will be used for fire protection for four relatively small structures at the campground. Forest fires would be handled by the Indiana Dunes twenty-person fire crew.

Mr. Rees’s second methodology for calculating an access fee to be paid by Indiana Dunes to the Town took into account the number of campsites. Mr. Rees stated that under 327 IAC 3-6-11, campsites are imputed to have a demand of fifty gpd. The resulting demand of the campground’s eighty campsites would be approximately 4,000 gpd, which when divided by 310 gpd, equals 12.9 EDUs, or thirteen when rounded. Mr. Rees concluded that if the water access fee is not limited to \$18,000 per connection but is considered to be \$18,000 per EDU, under this method the water access fee would be \$234,000 (\$18,000 per EDU x thirteen EDUs).

*D. The Department’s Rebuttal Testimony.* In rebuttal, Mr. Russell stated that contrary to Mr. Ireland’s recollection, he believes the Department was actively involved in negotiating the Settlement Agreement. According to Mr. Russell, the Department reviewed and commented on the terms of the Settlement Agreement because the Department wanted to assure all charges were properly phrased so there would be no confusion with future connections and services. Also, during the Evidentiary Hearing, Mr. Russell stated the changes the Department proposed to the Settlement Agreement were “designed to make sure customers connecting to the Beverly Shores system are required to pay Michigan City’s connection and other fees.” (Tr. at A-26).

Mr. Russell stated that, in his opinion, the Settlement Agreement does not authorize anything other than an \$18,000 access fee, regardless of tap size. Further, nothing in the Settlement Agreement or the Commission’s January 16, 2008 Order in this Cause indicate that the Town’s \$18,000 access fee is based on EDUs or meter size. Also, the \$18,000 fee is not based on consumption, but is a proxy for the water system tax that would be paid if Indiana Dunes were a taxpaying property owner. Mr. Russell stated he does not believe an \$18,000 access fee for Indiana Dunes is unfair or inequitable to the Town, or a windfall for Indiana Dunes.

Mr. Russell testified he has concerns with whether Beverly Shores would use the connection fees paid by Indiana Dunes to pay down the SRF Loan. He referred to his Rebuttal Exhibit RER-1, which indicates that Beverly Shores cannot prepay the SRF Loan until at least

January 20, 2014. He also expressed concern that the Town may receive additional access fees from customers who connect to the Indiana Dunes extension.

Mr. Russell testified he does not believe Indiana Dunes' proposed 6" connection will affect the Town's ability to provide adequate fire protection services. The proposed connection is for limited fire protection purposes. Mr. Russell also did not believe Indiana Dunes' proposed 6" connection will affect the Town's ability to connect approximately 100 residents that are not yet connected to the system. He said Indiana Dunes' consumption will be seasonal and limited to fire protection. Mr. Russell added that based upon his review of the preliminary engineering report ("PER"), the Beverly Shores system was designed to accommodate connection of the Indiana Dunes' campground.

Mr. Russell said he does not disagree with the method Mr. Julien used to calculate the proposed \$580,000 access fee. Mr. Russell, however, is concerned that the Town is attempting to change the structure by which the Town is financing the water grid system. Further, Mr. Russell stated he believes Mr. Julien's use of fifty EDUs was not appropriate in this instance since Indiana Dunes' usage will be limited.

Mr. Traynham stated Indiana Dunes could not have participated in the construction of the Beverly Shores system. He explained that because Indiana Dunes is a federal agency, it could not participate in construction activities outside the boundaries of the Indiana Dunes absent Congressional authority.

Mr. Traynham testified Indiana Dunes is not attempting to connect to the Beverly Shores system at far less than its fair share of the cost. He explained Indiana Dunes will make a significant investment to connect to the Beverly Shores system through the construction of the extension and payment of the \$18,000 connection fee. In Mr. Traynham's opinion, Indiana Dunes is required to pay a one-time tap fee of \$18,000. He referred to his Rebuttal Exhibit GMT-1 in testifying that Beverly Shores advised Indiana Dunes in March 2004 that the tap-in fee would be \$18,000.

Mr. Traynham said the \$580,000 charge proposed by Mr. Ireland and Mr. Julien is excessive. He testified Indiana Dunes' consumption would not be equivalent to fifty users. Mr. Traynham noted the bonds issued to pay for the water system are payable from property taxes and not user rates, as reflected in the Settlement Agreement and January 16, 2008 Order. Thus, the connection fees for out-of-Town properties and non-taxpaying customers are based upon what the average taxpaying property owner in Beverly Shores would be expected to pay in property taxes over twenty years, which would be \$18,000.

Mr. Traynham did not believe an \$18,000 access fee for Indiana Dunes to be unfair. Likewise, Mr. Traynham did not think Indiana Dunes' proposed 6" connection will affect the Town's ability to provide adequate fire protection services. He explained the 6" meter connection was not sought to fight a major fire but instead to suppress small fires within the campground. If a major fire were to occur, it would be unlikely for it to occur where the fire hydrants served by the 6" connection would be located. Therefore, the proposed 6" connection would not place great demand on the Town's system or diminish capacity and water pressure. He

added that the average monthly usage of Indiana Dunes would only be 64,000 gallons during peak season.

Mr. Traynham stated the 4" or 5" inch wells proposed by Mr. Himan would not produce enough water to the campground for fire protection purposes. Mr. Traynham testified Indiana Dunes has other alternatives with respect to a potential water supply for the campground. These alternatives include obtaining water service from Indiana-American. Tr. at A-108 – A-109.

Mr. Maurer, a professional engineer with Haas & Associates LLC Consulting Engineers testified on behalf of the Department. Mr. Maurer said he was very familiar with the Beverly Shores system and served as design engineer on the planning and designing of the Beverly Shores system. Mr. Maurer testified that he prepared the PER, which was identified as Petitioner's Exhibit No. 11.

Mr. Maurer testified he did not agree that allowing Indiana Dunes to connect to the Beverly Shores system through a 6" meter connection could impair the Town's ability to adequately provide fire protection. He explained the 6" proposed connection would draw approximately the same flow as the use of the existing fire hydrant and 5" diameter hose to fill trucks suggested by Mr. Himan as an alternative. Mr. Maurer also testified the anticipated peak water usage by the campground could be handled by a 1 1/2" meter; the 6" meter was necessary only because of the need for fire protection.

Mr. Maurer stated his 2010 Memorandum on hydraulic calculations indicated the Beverly Shores system is capable of handling two simultaneous 1,000-gallon per minute fire hydrant usages. The 6" water service to the campground would supply fire hydrants in the campground. If those hydrants were only used for connecting 2 1/2" fire hoses with nozzles, the 1,000-gallon per minute fire flow would probably not be achieved. He testified the Indiana Dunes campground would increase the existing number of Beverly Shores system customers by .24%, and the campground would comprise .19% of all of the customers at total development of the Beverly Shores system. He testified that those percentages represent the degree of impairment of the Town's ability to provide fire protection.

During the Evidentiary Hearing, Mr. Maurer acknowledged .24% was derived by dividing one by the number of the Town's customers, 415. Tr. at B-10. Mr. Maurer further acknowledged that prior to construction of the system, his firm analyzed the needs of the Town and surrounding community and described the campground as "a large water user." *Id.* The firm determined the peak day water usage of the campground would amount to 20% of the system's peak usage, as compared to the residents of the Town who would account for 80% of the system's peak usage. Tr. at B-11.

In Mr. Maurer's opinion, the campground water usage would not pose a capacity problem for the Beverly Shores system. He testified the Beverly Shores system was designed for fire flow rates and, as a result, it had considerable excess capacity for water use flow rates. He further said the PER contemplated connection of the Indiana Dunes campground to the Beverly Shores system.

Mr. Maurer stated the August 30, 2004 Memorandum he provided to Mr. Ireland, which was included in Mr. Ireland's testimony as Exhibit GPI-4, was not intended to suggest or imply

that there could not be connections to the Beverly Shores system with meter sizes greater than 5/8" or 1". Mr. Maurer explained the purpose of the Memorandum was to address information regarding meter sizes for specific residential customers using 5/8" or 1" meters.

Mr. Maurer also testified he did not think it was necessary for the Commission to require a booster pump station to be constructed or installed prior to connecting Indiana Dunes to the Beverly Shores system. He testified that the Beverly Shores system was designed to accommodate the proposed connection. He also testified that he did not believe the Town's insurance rating would be adversely affected by the Indiana Dunes' proposed connection since the Beverly Shores system was designed to accommodate the proposed connection.

**6. Commission Discussion and Findings.** The Commission is presented with three issues in this Cause: (1) whether the access fee for out-of-Town, non-taxpaying properties is based on the size of the connection; (2) whether property owners who connect to the Indiana Dunes water main extension have to pay an access fee to the Town; and (3) whether the connection of Indiana Dunes poses capacity and water pressure issues for the Town's system that should be resolved at this time. The Commission will address each issue separately.<sup>1</sup>

*A. Access Fee.* The Department argues that pursuant to the Settlement Agreement, Indiana Dunes, as an out-of-Town non-taxpaying property should pay a one-time access fee of \$18,000. Conversely, the Town argues that pursuant to the Settlement Agreement, connection sizes are limited to 1". Thus, a property requesting to connect to the Town's system must pay \$18,000 per inch of the proposed connection. Since Indiana Dunes wishes to connect to the system with a 6" water main, it must pay \$108,000, according to the Town. Based on the language of the Settlement Agreement and the January 18, 2008 Order approving it, the Commission finds Indiana Dunes should pay a one-time access fee of \$18,000 to the Town.

The Settlement Agreement does not address the number of connections or the tap size in establishing the access fee. Instead, the Settlement Agreement focuses on the location of a property in relation to the Town and whether the owner of the property pays taxes. Generally, taxpaying property owners pay to the Town an access fee based on the time the connection is requested plus a water system tax. Non-taxpaying property owners pay to the Town a one-time access fee of \$18,000. Further, the Settlement Agreement explains, "In entering into this Agreement, the Parties' intention is that all potential users of its system (whether their *properties are located inside or outside of the corporate boundaries of the Town*) are treated in an equitable manner. This Agreement is intended to preserve the Town's collection of tap-in fees [i.e., access fees] and 'water system tax,' both of which are necessary to ensure that the Town has sufficient funds to repay the outstanding principal and interest of the SRF loan." Settlement Agreement at 4 (emphasis added). No mention of connection size, or capacity to be used, is made in the Settlement Agreement.

The parties agree Indiana Dunes is an out-of-Town, non-taxpaying property that wishes to connect to the Town's water system via a water main extension. Section III(C) of the Settlement Agreement is entitled "Connection of Non-Taxpaying Property Owners to the Town's

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<sup>1</sup> The Commission notes the Settlement Agreement requires property owners who connect to the Town's system to also pay a tap fee to the Department. Since the issues raised in this Cause concern the payment of fees to the Town, the Commission will only discuss the payment of access fees to the Town.

System,” and thus specifically addresses Indiana Dunes’ request. Section III(C) states, “Owners of non-taxpaying properties, whether located inside the Town (or outside of the Town), will continue to pay a one-time tap-in fee of \$18,000 as a substitute for the ‘water system’ tax.” Section III(C) also explains the Town reviewed the non-taxpaying properties likely to connect its system and states, “Most of those properties are owned by the Indiana Dunes National Lakeshores and the Town believes the \$18,000 tap-in fee for such properties is lower than what the cost would be if the ‘water system tax’ rate were applied to the value of the properties.” Section III(C) does not, however, require Indiana Dunes or any other non-taxpaying property owner to pay a fee based on connection size or capacity to be used.

The Town relies on the Beverly Shores Code of Ordinances § 50.02, which is attached to the Settlement Agreement as Exhibit B, as support for its assertion that a 1” tap size is what was contemplated by the parties and the Settlement Agreement. The Commission disagrees. Section D(5) of the Ordinance provides, “Homeowners have the option of up-sizing service, during installation, from a 3/4-inch/5/8-inch meter to a 1-inch meter . . . .” Section D(6) of the Ordinance provides, “A 1-inch meter is deemed to be useful for homes located at high elevations or for those using large quantities of water outdoors.” The language allows *homeowners* to up-size to a one-inch meter and explains a one-inch tap is appropriate for certain *homes*; it does not state that the fee for connection to the Town’s system is dependent upon tap size. Further, Section D(3) of the Ordinance lists the amounts for tap-in fees for the Town’s taxpaying property owners and non-taxpaying property owners without mentioning the size of the of the connection.

On page eighteen of his direct testimony, Mr. Ireland discusses the connection of taxpaying property owners to the Town’s system and states, “The vast majority of such taxpaying property owners, however, have paid a tap-in fee for a connection of 1-inch or less, and the Town has never allowed a tap of more than 2-inches.” On page three of his direct testimony Mr. Julien states properties receiving domestic water service from the Town’s system are served from connections ranging from 5/8” to 1 1/2” in size. Based on the Town’s argument that the Settlement Agreement only contemplates tap sizes of 1”, the Town should have charged less for a 5/8” connection and more for a 1 1/2” connection than the access fees enumerated in the Settlement Agreement. However, the evidence presented does not indicate that the Town adjusted its access fee for these connections.

Finally, the January 16, 2008 Order approving the Settlement Agreement and access fee discusses the background and dispute leading to the execution of the Settlement Agreement, the fees to be paid by owners of taxpaying and non-taxpaying properties, and the purpose for the access fees. The Order, however, does not mention the payment of fees based on connection size or capacity to be used.

If the Town intended for the cost of connection to its system to be based on the size of the connection, it should have specifically stated as much in the Settlement Agreement and the Beverly Shores Code of Ordinances § 50.02. Thus, the Commission agrees with the Department’s contention that the Settlement Agreement requires owners of a non-taxpaying property who connect to the Town’s system to pay a one-time access charge of \$18,000. Accordingly, the Commission finds that if Indiana Dunes connects the campground to the

Beverly Shores system using one connection, the proposed 6" water main, it must pay the Town \$18,000.

*B. Future Connections.* The testimony in these proceedings has raised the issue of whether future access fees may be collected by Beverly Shores from main extensions not paid for by the Town but paid for by the Department or others. According to Mr. Russell, there are up to six homes and a church that could immediately be connected to the Indiana Dunes' main extension. The Settlement Agreement, as discussed previously, establishes fees to be paid by a property owner's connection to the Town's water system. The question to be determined by the Commission is whether property owners who connect to the Indiana Dunes' water main extension have to pay to the Town the access fees established by the Settlement Agreement. The Commission finds that property owners who connect to the Town's system via the Indiana Dunes' water main extension should pay to the Town the access fees pursuant to the Settlement Agreement.

Although the Settlement Agreement does not mention connections to water mains, Mr. Russell's testimony submitted in support of the Settlement Agreement provides clarity. According to page seven of the January 16, 2008 Order, Mr. Russell testified that "under the Settlement Agreement new customers connecting to the Town's system, whether they are connecting to the existing system or *as a result of the construction of a new main extension thereto*, will be required to pay the fees assessed by the Town as approved by the Settlement Agreement . . . ." (emphasis added). Any property connecting to the Indiana Dunes' main extension would be connecting to the Town's system as the result of a new main extension. As a result, the Commission finds such properties should pay to the Town the access fees approved by the Settlement Agreement.

*C. Capacity and Water Quality Issues.* The Town provided evidence that the proposed 6" meter connection of Indiana Dunes to the Town's system would adversely affect the Town's water pressure and system capacity. The Town requested that if the Commission were to require the Town to permit Indiana Dunes to connect to the Town's system, the Commission should require the Department and/or Indiana Dunes to pay for the costs of an additional booster station and such other improvements to address capacity and water pressure issues caused by the connection.

The evidence presented by the parties does not support the Town's request for any such improvements. Mr. Ireland and Mr. Himan testified that the Indiana Dunes 6" connection could reduce capacity in the Town's system and result in inadequate water pressure for fire protection. However, Mr. Mauer, the licensed professional engineer who designed the Town's system and prepared the PER for the system, testified that in his opinion the proposed 6" connection would not adversely affect either the system's capacity or pressure.

In addition, Mr. Traynham stated the 6" inch connection was only needed for fire protection purposes. The evidence presented by the Department establishes that the actual consumption of water at the campground will be limited. In fact, Mr. Maurer testified that absent the need for fire protection, the campground's needs could be handled by a 1 1/2" meter. With respect to any potential fires at the Indiana Dunes campground, the testimony of Mr. Traynham and Mr. Himan reveals that such fires are limited to small brush fires, are infrequent, and Indiana

Dunes has a fire fighting force capable of handling significant fire events and would be unlikely to require use of the hydrants at the campground.

In light of the evidence presented, the Commission finds improvements to the Town's system are unnecessary for Indiana Dunes to connect to the Town's water system.

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

1. Indiana Dunes shall pay to Beverly Shores a one-time access charge of \$18,000, regardless of meter size, pursuant to the Settlement Agreement to connect to the Town's system.

2. Property owners connecting to the Town's system via the Indiana Dunes' main extension shall pay to the Town access fees in accordance with the Settlement Agreement and Paragraph 6B of this Order.

3. The Department shall pay the following itemized charges within twenty (20) days of the date of this Order to the Secretary of this Commission:

Commission charges	\$2,718.92
Legal charges	\$ 520.35
OUCG charges	<u>\$4,226.90</u>
Total:	\$7,466.17

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

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

**APPROVED: JUN 22 2011**

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

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