

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF INDIANA-AMERICAN WATER)
COMPANY, INC. FOR APPROVAL OF ITS)
STATEWIDE WISE WATER USE PLAN AND)
RELATED REGULATORY TREATMENT,)
INCLUDING AUTHORITY TO DEFER COSTS)
ASSOCIATED WITH THE DEVELOPMENT,)
IMPLEMENTATION, AND APPLICATION OF)
SUCH PLAN FOR FUTURE RECOVERY IN BASIC)
RATES.)

CAUSE NO. 43649

APPROVED: AUG 26 2009

BY THE COMMISSION:

Jeffrey L. Golc, Commissioner

Angela Rapp Weber, Administrative Law Judge

On March 3, 2009, Indiana-American Water Company, Inc. ("Petitioner" or "Indiana-American") filed with the Commission its Petition for approval of its Statewide Wise Water Use Plan and related regulatory treatment, including authority to defer costs associated with the development, implementation and application of such plan for future recovery in basic rates. On March 31, 2009, Petitioner filed its prepared testimony and exhibits constituting its case-in-chief. On May 4, 2009, a petition to intervene was filed by the Town of Schererville, Indiana ("Schererville"), which the Presiding Officers granted pursuant to a docket entry issued on May 13, 2009. On June 15, 2009, the Office of Utility Consumer Counselor ("OUCC") submitted the prefiled testimony of Harold L. Rees. Also on June 15, 2009, Indiana-American, the OUCC, and Schererville (collectively, the "Parties") filed a Joint Stipulation and Settlement Agreement (the "Settlement Agreement") along with supporting testimony.

Pursuant to notice of hearing given as provided by law, proof of which was incorporated into the record by reference and placed in the official files of the Commission, a public hearing in this Cause was held at 1:30 p.m. on June 22, 2009 in Room 224 of the National City Center, Indianapolis, Indiana. Petitioner and the OUCC appeared and participated at the hearing, and the Parties' pre-filed evidence was offered and admitted in evidence without objection. The Parties waived cross-examination. An additional public hearing was held on June 30, 2009 at 1:30 p.m. in Room 224 of the National City Center. No members of the general public appeared or attempted to participate.

The Commission, having considered the evidence of record and the applicable law, now finds:

1. **Notice and Jurisdiction.** Due, legal, and timely notice of the public hearing was given by the Commission as required by law. Petitioner is a "public utility" within the meaning of that term in Ind. Code § 8-1-2-1 and is subject to the jurisdiction of the Commission in the manner and to the extent provided by law. The Commission has jurisdiction over Petitioner and the subject matter of this proceeding.

2. **Petitioner's Characteristics.** Petitioner is an operating public utility incorporated under the laws of the State of Indiana. It provides water utility service to the public in and adjacent to numerous communities in twenty-one counties in the State of Indiana. Petitioner also provides sewer utility service in two counties in Indiana. Petitioner is engaged in the provision of water utility service by means of water utility plant, property, equipment, and related facilities owned, operated, managed, and controlled by it, which are used and useful for the convenience of the public in the collection, purification, pumping, distribution, and furnishing of water to the public in such areas. Petitioner is engaged in the provision of sewer service by means of utility plant, property, equipment, and related facilities owned, operated, managed, and controlled by it, which are used and useful for the convenience of the public in the collection and treatment of wastewater from the public.

3. **Relief Requested.** Petitioner requests Commission approval of Indiana-American's Statewide Wise Water Use Plan ("WWUP"), authorization to commence at least three pilot programs and approval of related regulatory treatment, including authority to defer implementation costs for future recovery. Petitioner filed the WWUP in fulfillment of its obligation, pursuant to a Settlement Agreement approved in the Commission's October 10, 2007 Order in Cause No. 43187. The WWUP is a long-range water conservation plan.

4. **Petitioner's Evidence.** Alan J. DeBoy, Vice President, Operations for Petitioner, sponsored the WWUP. He presented testimony regarding the steps taken by Petitioner to develop the WWUP and the three distinct Phases and schedule of Petitioner's conservation planning. Mr. DeBoy testified that Petitioner is committed to the preservation, protection, and efficient use of water resources. Mr. DeBoy stated that although Indiana is not currently experiencing the water shortage issues facing other regions, conservation remains important because water should not be wasted.

Mr. DeBoy explained that Indiana-American currently practices water conservation. The WWUP establishes a more formal plan that will provide a process for the development of the most effective conservation methods for Indiana-American's nineteen water systems. He stated that the WWUP is also being offered pursuant to the Settlement Agreement executed in Cause No. 43187, Indiana-American's most recent rate case. The WWUP is a document that Petitioner will use to identify, study, and evaluate conservation measures that might be effective in encouraging efficient water use. According to Mr. DeBoy, water conservation benefits Indiana-American and its customers.

According to Mr. DeBoy, conservation measures provide customers with the ability reduce their water demand and ultimately monthly bills. If customer demand is reduced, Indiana-American may be able to postpone the construction of additional capacity and the purchase of water supply, thus reducing its customers' rates in the long-term. Mr. DeBoy noted that as a result of conservation, water will not be wasted, which benefits the environment and ensures that Indiana will have a water supply to meet growing demand. Finally, if water conservation becomes a part of Indiana-American's long-term, comprehensive planning, the water that is conserved becomes another source in its supply-side planning.

Mr. DeBoy next testified about the creation of the WWUP. Mr. DeBoy stated that Petitioner worked with a water resources consultant and two external advisory board members. Mr. DeBoy explained that the WWUP was developed by studying conservation planning efforts across the United States, including information provided by Indiana-American subsidiaries. Indiana-American even consulted with the Commission and OUCC staff.

Mr. DeBoy testified about the WWUP's "phased approach" proposed by Petitioner. Mr. DeBoy explained that rather than attempt to develop and deploy conservation measures across all of Petitioner's operations simultaneously, Petitioner has approached conservation planning in three phases. The culmination of the first phase ("Phase I") is the development of the WWUP. The second phase ("Phase II") would consist of public education and developing conservation plans in at least three pilot communities. Mr. DeBoy testified that this second phase would begin within six months of approval and be completed within 24 months. Mr. DeBoy stated that the third phase ("Phase III") would consist of evaluating the pilot programs and extending planning to the remaining communities.

Mr. DeBoy stated that Indiana-American will divide its operations into categories, which will consist of small, average, and large changes in demand over historical usage. Within each of these categories, pilot communities will be chosen based additional factors such as ratio of usage, median income, political environment, and available capacity. Moreover, various operational and capacity data will be collected for each Indiana-American district. Mr. DeBoy testified that Petitioner will continue to explore additional conservation methods, such as water audits, leak detection and repair, public education, and conservation pricing. Results of the initial pilot programs will be measured by assessing performance against established goals. Measures that are not as effective will be revised or discontinued. Finally, Mr. DeBoy explained that as the WWUP is expanded to Indiana-American's remaining communities, Petitioner expects to tailor the conservation measures to meet the particular needs of its nineteen operating systems.

Gary M. VerDouw, Manager of Rates and Regulations for American Water Works Service Company, addressed the proposed deferral, accounting, and ratemaking treatment for the development and implementation of Petitioner's WWUP. Mr. VerDouw testified that Petitioner seeks to defer for future recovery the expenses, including carrying charges, of developing and implementing the WWUP. Mr. VerDouw stated that cost recovery is important for Petitioner's conservation expenditures for many of the same reasons the Commission has recognized in providing cost recovery for electric demand-side management programs. Mr. VerDouw indicated that if Petitioner were denied cost recovery for the costs incurred in developing and implementing a conservation plan, it may have to re-evaluate program expenditures. Mr. VerDouw also indicated that Petitioner is not seeking lost revenues or an incentive for its conservation program at this time.

Mr. VerDouw next outlined the three categories of costs Petitioner will incur in connection with its conservation plan: (1) expenses that will be incurred in connection with the development and approval of the WWUP; (2) expenses that will be incurred in connection with the development, implementation, and application of the particular measures for the pilot programs; and (3) expenses that will be incurred in connection with the development,

implementation, and application of the particular measures in the subsequent communities where the WWUP is implemented following the pilot programs.

Mr. VerDouw stated that Petitioner will reflect the first category of expenses in Petitioner's revenue requirement in its pending rate case, Cause No. 43680. For the second category of expenses, Petitioner proposes to defer these costs in Account 186 as a regulatory asset until such time as a future rate order is issued, which includes the recovery of the pro forma level of these expenses plus the amortization of the deferred expenses. For the third category of expenses, Petitioner proposes that, for each subsequent operation, Petitioner be authorized to defer the expenses until such time as a future rate order is issued, which includes the recovery of the pro forma level of the expenses associated with that particular operation plus amortization of the deferred expenses. Mr. VerDouw testified that Petitioner also proposes to include the unamortized balance of the deferred asset in rate base for ratemaking purposes. Mr. VerDouw further stated that Petitioner proposes to calculate carrying charges based on Petitioner's weighted cost of capital using the capital structure in place as of the date the expense is recorded and the cost of equity utilized in the most recent rate order. Mr. VerDouw stated that as each particular amortization begins, Petitioner proposes to amortize the regulatory assets over a period of five years.

Mr. VerDouw concluded that Petitioner's proposed regulatory treatment of these costs is consistent with Commission precedent with respect to the deferral of costs associated with demand-side management programs for several electric utilities, and that approval of the requested relief is in the best interest of Petitioner and its customers.

5. Settlement Agreement. The Settlement Agreement entered into by all of the Parties in this Cause is attached hereto as Attachment A and incorporated herein by reference. The Settlement Agreement provides that the relief requested by Petitioner should be granted, subject to some minor modifications. More specifically, the Settlement Agreement provides that the Parties will work together in a collaborative manner in developing and implementing Phase II of Petitioner's WWUP, which consists of the public education campaign and conservation planning in the pilot communities. The Parties will continue to collaborate during Phase III as Petitioner expands its conservation planning to its remaining communities.

The Settlement Agreement further provides that Petitioner should be authorized to recover costs incurred, as of the date of a final Order in this Cause, in developing the WWUP to the extent that those costs will not otherwise be recovered in rates. For future expenses associated with the WWUP, the Settlement Agreement provides that cost deferral for such expenses should be approved as described in Mr. VerDouw's testimony to the extent that the costs are agreed to by the collaborative. The Settlement Agreement states that the costs associated with Phase II are anticipated to be approximately \$190,000, but that this figure is neither a cap nor a floor on spending levels.

The Settlement Agreement states that the Parties have devoted significant time and collaborative effort to review information concerning Petitioner's requested relief in this proceeding, and that the terms and conditions of the Settlement Agreement represent a fair, reasonable and just resolution of the matters presented in this Cause.

6. **Testimony in Support of Settlement Agreement.** Harold L. Rees, a Senior Utility Analyst for the OUCC, provided testimony in support of the Settlement Agreement. Mr. Rees testified that Indiana-American is already performing some water efficiency measures, and that the WWUP is a good start towards a larger-scale project. Mr. Rees believed that the three-phase approach is practical and avoids the pitfalls of a one-size fits all model.

Mr. Rees next described the collaborative process that the Parties would use to further develop the details of the WWUP. He explained that the OUCC has participated in several collaboratives in the electric and natural gas industries and would expect a similar approach with Indiana-American. Mr. Rees explained that the Parties would meet on a regular basis, perhaps every 8-10 weeks, and would work together to try and reach a consensus on the issues being discussed. An important goal would ultimately be to create a large-scale plan to be jointly presented to the Commission in a later proceeding. Mr. Rees also stated that the Parties are open to Commission participation in the collaborative.

Mr. Rees stated that the Settlement Agreement can benefit regulators, ratepayers, and the utility. The Settlement Agreement and collaborative will provide administrative efficiency and should lead to a better exchange of ideas and ultimately better results. Mr. Rees further testified that using water more wisely benefits consumers and makes better use of Indiana's natural resources. It could also make more efficient use of Indiana-American's resources. Mr. Rees recommended that the Commission approve the Settlement Agreement in its entirety.

7. **Commission Determinations.** Settlements presented to the Commission are not ordinary contracts between private parties. *United States Gypsum, Inc. v. Indiana Gas Co.*, 735 N.E.2d 790, 803 (Ind. 2000). 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.

Furthermore, any Commission decision, ruling, or order—including the approval of a settlement—must be supported by specific findings of fact and sufficient evidence. *United States Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coalition v. Public Service 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 Indiana Code § 8-1-2, and that such agreement serves the public interest.

The evidence shows that Petitioner engaged in a collaborative effort with the OUCC and other interested stakeholders to develop an approach to water conservation that should promote efficient use of water. The WWUP appears to be the product of considerable effort and utilizes lessons learned from other water conservation programs across the country. Additionally, the

collaborative process agreed to by the parties in this Cause lends further assurance that Petitioner will continue to incorporate the input of other parties, including the Public, in developing, implementing, and expanding Petitioner's conservation planning. The cost recovery requested by Petitioner is reasonable and is consistent with our treatment of similar costs incurred during the development of demand-side management programs by electric utilities and therefore should be approved. The Commission further finds that the WWUP satisfies the requirement of the Settlement Agreement approved in Cause No. 43187, requiring that Petitioner create and file a long-range conservation plan with the Commission.

Accordingly, the Commission finds that based on the record, the Settlement Agreement is in the public interest and should be approved. With regard to future citation of the Settlement Agreement, the Commission finds the Settlement Agreement and our approval of it should be treated in a manner consistent with our finding in *Richmond Power & Light, (Ind. Util. Reg. Comm'n, Cause No. 40434, Mar. 19, 1997)*. In addition, the Commission retains its ability to review the reasonableness and prudence of the future costs sought to be recovered in future cases to be filed with the Commission, including rate cases.

It shall also be a condition of this Order that Petitioner shall report certain information to the Commission and the OUCC and any additional information that the Commission may from time to time request. Specifically, Petitioner shall file with the Commission biannual reports, with the first report being filed six (6) months from the date of this Order. Each report shall include an itemized listing of the costs Petitioner has incurred as of the date of that report. The report shall also include the names and/or locations of the pilot communities. Petitioner shall also include the details of the pilot programs to be implemented in each pilot community. Each report shall also outline the progress of the pilot programs as of the date of the filed report. Once Phase III begins, Petitioner shall file with the Commission a timeline for the evaluation of the pilot programs and for the implementation of the WWUP to the remaining Indiana-American communities. Petitioner shall also provide the Commission with the results of such evaluations and the details of the plans to be implemented in each remaining Indiana-American community. Finally, upon the completion of Phase III and in lieu of biannual filings, Petitioner shall annually file a report with the Commission detailing the continued progress and results of the WWUPs implemented in all nineteen Indiana-American communities. The yearly filing date of this particular report shall be the yearly anniversary of the date of the Order in this Cause. All reporting requirements shall end five (5) years from the date of this Order unless at any time in the future the Commission deems otherwise.

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

1. The Settlement Agreement, which is attached hereto as Attachment A, shall be and hereby is approved.
2. Petitioner is hereby authorized to implement its Wise Water Use Plan.

3. Petitioner shall be authorized to defer, for future recovery, costs associated with its Wise Water Use Plan as described above. Recovery of such costs shall be contingent upon the receipt of Commission approval.

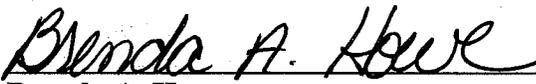
4. Petitioner shall file with the Commission in this Cause subsequent reports pursuant to Paragraph 7 above.

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

HARDY, ATTERHOLT, GOLC, AND ZIEGNER CONCUR; LANDIS ABSENT:

APPROVED: AUG 26 2009

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



Brenda A. Howe
Secretary to the Commission

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

**PETITION OF INDIANA-AMERICAN WATER)
COMPANY, INC. FOR APPROVAL OF ITS)
STATEWIDE WISE WATER USE PLAN AND)
RELATED REGULATORY TREATMENT,) CAUSE NO. 43649
INCLUDING AUTHORITY TO DEFER COSTS)
ASSOCIATED WITH THE DEVELOPMENT,)
IMPLEMENTATION, AND APPLICATION OF SUCH)
PLAN FOR FUTURE RECOVERY IN BASIC RATES.)**

STIPULATION AND SETTLEMENT AGREEMENT

Indiana-American Water Company, Inc. ("Company" or "Petitioner"), the Indiana Office of Utility Consumer Counselor ("OUCC"), and the Town of Schererville, Indiana (collectively, the "Parties"), in the interest of efficiency have devoted significant time and collaborative effort to review information concerning Petitioner's requested relief in this proceeding. The Parties, having been duly advised by their respective staff, experts and counsel, stipulate and agree that the terms and conditions set forth below represent a fair, reasonable and just resolution of the matters set forth below, subject to their incorporation by the Indiana Utility Regulatory Commission ("Commission") into a final, non-appealable order ("Final Order") without modification or further condition that may be unacceptable to any Party. If the Commission does not approve this Stipulation and Settlement Agreement ("Agreement"), in its entirety, the entire Agreement shall be null and void and deemed withdrawn, unless otherwise agreed to in writing by the Parties.

I. TERMS AND CONDITIONS

1. The Petition in this Cause shall be approved, except for the modification set forth in this Agreement.

2. The Parties stipulate and agree to work together in a collaborative manner in developing and implementing Phase II of Indiana-American's Wise Water Use Plan. "Phase II" shall consist of the public education campaign and conservation planning in the pilot communities as described in the Wise Water Use Plan, pp. 1-2. Any Party initially participating in the collaborative may opt out of the collaborative in the future.
3. The Parties stipulate and agree that Indiana-American shall be authorized to recover costs incurred, as of the date of a Final Order in this Cause, in developing the Wise Water Use Plan to the extent that those costs will not otherwise be recovered in rates, either currently or in Cause No. 43680, Indiana-American's pending rate case.
4. The Parties stipulate and agree that cost deferral for future expenses associated with the Wise Water Use Plan should be approved as described in Mr. VerDouw's testimony to the extent that the costs are agreed to by the collaborative.
5. The Parties stipulate and agree that the costs associated with Phase II are anticipated to be approximately \$190,000. The Parties further stipulate and agree that this figure is not a cap or floor on spending levels, but instead is expected to be representative of the costs in designing and implementing Phase II.

II. PRESENTATION OF THE AGREEMENT TO THE COMMISSION

1. The Parties shall support this Agreement before the Commission and request that the Commission expeditiously accept and approve the Agreement without any change or condition(s) unacceptable to either Party.

2. A Final Order approving this Agreement shall be effective immediately, and the agreements contained herein shall be unconditional, effective and binding on all parties as an Order of the Commission.

III. EFFECT AND USE OF AGREEMENT

1. It is understood that this Agreement is reflective of a negotiated settlement and neither the making of this Agreement nor any of its provisions shall constitute an admission by any Party to this Agreement in this or any other litigation or proceeding. It is also understood that each and every term of this Agreement is in consideration and support of each and every other term.
2. This Agreement shall not be used as precedent in any other proceeding or for any other purpose, except to the extent necessary to implement or enforce this Agreement.
3. This Agreement is the result of compromise in the settlement process and except as provided herein, is without prejudice to and shall not constitute a waiver of any position that any of the Parties may take with respect to any or all of the items resolved here and in any future regulatory or other proceedings.
4. The evidence in support of this Agreement, including Petitioner's prefiled case-in-chief filed March 31, 2009, as well as the OUCC's prefiled testimony in support of the Agreement to be filed June 15, 2009, constitutes substantial evidence sufficient to support this Agreement and provides an adequate evidentiary basis upon which the Commission can make any findings of fact and conclusions of law necessary for the approval of this Agreement, as filed.

5. The communications and discussions during the negotiations and any materials produced and exchanged concerning this Agreement all relate to offers of settlement and shall be privileged and confidential, without prejudice to the position of any Party, and are not to be used in any manner in connection with any other proceeding or otherwise.

6. The undersigned Parties have represented and agreed that they are fully authorized to execute the Agreement on behalf of their designated clients who will be bound thereby. The Parties shall not appeal or seek a stay of the Final Order or related orders to the extent such orders are specifically implementing the provisions of this Agreement. The Parties shall support this Agreement in the event of any appeal or a request for a stay by a person not a party to this Agreement or if this Agreement is the subject matter of any other state or federal proceeding.

7. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

ACCEPTED and AGREED this 15th day of June, 2009.

INDIANA-AMERICAN WATER COMPANY, INC.

By: David K. Baker
David K. Baker, President

INDIANA OFFICE OF UTILITY CONSUMER
COUNSELOR

By: Jeffrey M. Reed
Jeffrey M. Reed, Attorney No. 11651-49
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TOWN OF SCHERERVILLE, INDIANA

By: _____
David M. Austgen, Attorney No. 3895-45
130 North Main Street
Crown Point, Indiana 46307

ACCEPTED and AGREED this 15th day of June, 2009.

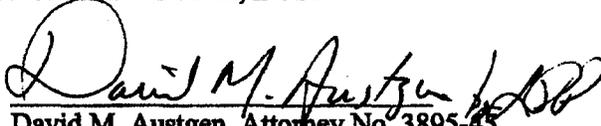
INDIANA-AMERICAN WATER COMPANY, INC.

By: _____
David K. Baker, President

**INDIANA OFFICE OF UTILITY CONSUMER
COUNSELOR**

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