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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE VERIFIED)
PETITION OF STUCKER FORK) CAUSE NO. 43780
CONSERVANCY DISTRICT FOR)
APPROVAL OF A NEW SCHEDULE OF)
RATES AND CHARGES FOR WATER) APPROVED: APR 14 2010
SERVICE)

BY THE COMMISSION:
Angela Rapp Weber, Administrative Law Judge

On September 9, 2009, Stucker Fork Conservancy District (“Stucker Fork”) filed with the Indiana Utility Regulatory Commission (“Commission”) a Verified Petition seeking a change to its existing rates and charges. On October 23, 2009, Stucker Fork prefiled the testimony and exhibits of Richard A. Burch and John M. Seever. Morgan Foods, Inc. (“Morgan Foods”) filed a Petition to Intervene on December 16, 2009, which the Presiding Officers granted pursuant to a Docket Entry issued on December 28, 2009. On January 7, 2010, Stucker Fork filed a Notice with the Commission indicating that Stucker Fork and the Office of Utility Consumer Counselor (“OUCC”) reached a settlement in this Cause. On January 8, 2010, Morgan Foods prefiled the testimony and exhibits of Otto W. Krohn. On January 20, 2010, Stucker Fork prefiled the rebuttal testimony and exhibits of John M. Seever, and the OUCC filed the settlement testimony of Richard J. Corey. On January 21, 2010, Stucker Fork prefiled the rebuttal testimony of Richard A. Burch.

Pursuant to notice given as provided by law, an Evidentiary Hearing was held in this matter on February 2, 2010 at 9:30 a.m. in Room 224 of the National City Center, 101 West Washington Street, Indianapolis, Indiana. At the Evidentiary Hearing, the Commission received into evidence the prefiled testimony and exhibits of Stucker Fork and the OUCC. Morgan Foods, however, did not offer or submit its prefiled testimony and exhibits into the record.

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

1. **Statutory Notice and Commission Jurisdiction.** Due, legal, and timely notice of these proceedings was given as required by law. Pursuant to Ind. Code § 14-33-20-14, a conservancy district such as Stucker Fork must seek Commission approval prior to adjusting its rates and charges for water service. Because Stucker Fork is a conservancy district seeking to adjust its rates and charges for water service, the Commission has jurisdiction in this matter.

2. **Petitioner’s Characteristics.** Stucker Fork is a conservancy district duly established by an April 9, 1964 order of the Scott County Circuit Court for the purpose of providing water supply service to customers within its service area. After its inception, Stucker

Fork completed construction of its initial water utility plant in 1970. Stucker Fork's service area now spans 210 square miles with 7,628 customers located in the Town of Austin and in rural areas in all or part of the following counties: Scott, Jefferson, Jackson, Jennings, Washington, and Clark. Stucker Fork's current facilities include a surface water system that is supplied by the Muscatatuck River and Lake Hardy Reservoir, a groundwater supply located at Marble Hill, approximately 950 miles of water mains, and other water treatment, transmission, and distribution facilities.

3. Existing Rates, Proposed Relief, and Test Year. Stucker Fork seeks approval in this matter to adjust its rates and charges for water service. Stucker Fork's existing rates and charges were established by Final Order issued by this Commission on July 28, 2006 in Cause No. 42752. In Cause No. 42752, Stucker Fork presented a cost of service study ("COSS") in support of its request to adjust its rates for its various classes of customers. After reviewing the evidence, the Commission approved a Joint Stipulation and Settlement Agreement between the OUCC and Stucker Fork in which Stucker Fork agreed to gradually phase in rates that would reduce interclass subsidies as reflected in the COSS. In the present case, Stucker Fork proposes to implement another phase of its COSS while also increasing its annual revenue by 15.5% or \$487,037. Assuming a test year ending March 31, 2009, Stucker Fork proposed a total net revenue requirement of \$3,622,868.

4. Stucker Fork's Prefiled Direct Evidence. Mr. Burch presented testimony and exhibits describing Stucker Fork's current water supply, distribution system, and anticipated capital needs to meet future demand for water supply in its service area. Mr. Burch described how his engineering firm has assisted Stucker Fork since its inception in the 1960s. Stucker Fork's service territory has experienced steady growth and currently includes 210 square miles and 7,628 residential, commercial, wholesale, and industrial customers.

Mr. Burch testified that Stucker Fork relies upon two sources of water supply: a surface water supply system that originates from the Muscatatuck River and a groundwater well field located at Marble Hill just west of the Ohio River in Jefferson County, Indiana. Mr. Burch stated that Stucker Fork's existing water production facilities will not have sufficient capacity to meet increased demand for water in its service area, especially if the area were to experience a drought or reduced rainfall. Mr. Burch also explained that Stucker Fork's treatment costs are higher for its surface water supply system than for its groundwater supply system. Mr. Burch testified that more stringent testing and water quality requirements recently imposed by the U.S. Environmental Protection Agency will increase the discrepancy between the cost of producing water from Stucker Fork's surface water supply system and its groundwater system.

Finally, Mr. Burch presented testimony and exhibits supporting the capacity allocation factors used by Mr. Seever in his COSS. He described in detail the capital improvement plan and other capital improvements, some of which will be paid for with cash on hand. Mr. Burch listed each of the capital improvements to be completed and the estimated cost of each in Petitioner's Exhibits 4 and 5 attached to his testimony. Mr. Burch testified that the capital improvements listed on Exhibits 4 and 5 need to be made in order to ensure safe and adequate service to Stucker Fork's customers.

Mr. Seever presented testimony and exhibits supporting Stucker Fork's proposal to adjust its rates and charges. He testified that his accounting firm had been retained to assist Stucker Fork and its consulting engineers with the development of an updated COSS to be used as a basis to make recommendations for changes in Stucker Fork's present schedule of rates and charges. Mr. Seever reduced his recommendations to writing in the form of a written accounting report that was attached to his testimony as Petitioner's Exhibit 7. Mr. Seever's accounting report is organized and divided into four sections.

(a) Overview of the First Section of the Accounting Report. The first section contains Stucker Fork's *pro forma* financial information. In this section Mr. Seever presented Stucker Fork's *pro forma* operation and maintenance expenses, the estimated annual cost of Stucker Fork's proposed capital improvement plan, the normalized annual revenues, and Stucker Fork's *pro forma* annual revenue requirements and *pro forma* annual operating revenue. Mr. Seever also presented information in this section concerning Stucker Fork's proposed tap fee, reconnection charge, and credit/debit card charges. The first section shows that Stucker Fork's total revenue requirements, including improvements equal to the capital improvement plan and reduced by other income, are \$3,622,868. This section also shows that normalized annual revenues would need to increase by 15.5% in order to meet Stucker Fork's revenue requirements.

(b) Overview of the Second Section of the Accounting Report. In Cause No. 42752, the Commission ordered Stucker Fork to gradually implement or move towards cost-based rates as set forth in the COSS. In this section, Mr. Seever calculated what Stucker Fork's rates would be if all the subsidies for Stucker Fork's classes of customers were eliminated at this time. Full allocation of costs would decrease residential rates by 7.37%. Commercial rates would increase by 6.94%, industrial rates would increase by 46.23%, wholesale rates would increase by 45.66%, and fire protection charges would increase by 163.84%.

(c) Overview of the Third Section of the Accounting Report. In the third section, Mr. Seever calculated Stucker Fork's proposed rates, assuming the results from the updated COSS are phased-in. Mr. Seever showed that to achieve the adjusted, cost-based targets in the COSS, residential revenues must be increased 9.61%, commercial revenues must be increased 3.47%, industrial revenues must be increased 23.11%, wholesale revenues must be increased 22.83%, and fire protection revenues must be increased by 81.92%. Mr. Seever also presented in this section the specific rates proposed by Stucker Fork in this Cause, which results in an overall rate increase of 15.5%.

(d) Overview of the Fourth Section of the Accounting Report. In the fourth section, Mr. Seever depicted certain unaudited supplemental financial data for Stucker Fork. Specifically, this section included a statement of net assets, comparative revenues and expenses, statements of cash flows, operating expenses, minimum account balances, and schedules detailing Stucker Fork's bond amortization. Mr. Seever also presented a summary of the test year consumer study and a summary of the usage and contractual minimums of Stucker Fork's industrial and wholesale customers.

5. Stucker Fork's Rebuttal and Settlement Testimony. Stucker Fork filed the rebuttal testimony and exhibits of Mr. Seever and Mr. Burch. As a part of its rebuttal testimony,

Stucker Fork presented and filed evidence supporting a proposed Joint Stipulation and Settlement Agreement (“Settlement Agreement”) between the OUCC and Stucker Fork. Stucker Fork’s rebuttal testimony also addressed the prefiled testimony and exhibits of Morgan Foods’ witness, Mr. Otto Krohn. Although it prefiled testimony and exhibits, Morgan Foods declined to offer such evidence into the record, and Morgan Foods did not object to the Settlement Agreement. Accordingly, the Commission’s discussion will be limited to those portions of Stucker Fork’s prefiled rebuttal evidence that support the proposed Settlement Agreement.

Attached to Mr. Seever’s rebuttal testimony was a copy of the Settlement Agreement. Mr. Seever explained that the Settlement Agreement has three primary financial components. First, the Settlement Agreement authorizes Stucker Fork to increase its annual revenue by \$378,547 or 12.1%. As a result, Stucker Fork’s total net revenue requirement on an annual basis would be \$3,514,378. Second, the Settlement Agreement requires Stucker Fork to implement its rate increase based on the updated COSS. Consistent with the calculations in the updated COSS, Stucker Fork is gradually moving toward eliminating the subsidies between Stucker Fork’s residential and non-residential customers as required by the Commission in Cause No. 42752. Third, the Settlement Agreement authorizes Stucker Fork to use the updated COSS in its next rate case as the basis for additional moves toward eliminating any further subsidies between Stucker Fork’s customer classes.

Mr. Seever also described the agreed-to adjustments made in reaching the Settlement Agreement. According to Mr. Seever, Stucker Fork agreed to eliminate \$63,936 from its revenue requirement for funding its annual debt service reserve. Instead, Stucker Fork will use a portion of its cash on hand to fully fund its debt service reserve. He also stated that Stucker Fork and the OUCC agreed to an annual downward adjustment of \$24,000 for rate case expense. This adjustment would be achieved by amortizing Stucker Fork’s rate case expense over five years rather than the three years as originally proposed by Stucker Fork in its case-in-chief. Finally, Mr. Seever stated that Stucker Fork and the OUCC agreed that Stucker Fork’s revenue requirement should be decreased by \$20,554 after eliminating \$4,899 in certain expenses from the test year and capitalizing \$15,655 in other expenses. The result is an overall rate increase of 12.1%.

6. OUCC’s Settlement Testimony. The OUCC filed the settlement testimony of Richard J. Corey. The purpose of Mr. Corey’s testimony was to explain the agreed-to adjustments for rate case expense, non-recurring and capitalized expenses, disallowed expenses, and debt service reserve.

Mr. Corey explained that because Stucker Fork infrequently files rate cases, the parties agreed that it would be more reasonable to amortize rate case costs over five years rather than three years. Mr. Corey proposed, and Stucker accepted, the elimination of certain expenses for an electrical contractor, billing software, and attorneys’ fees that were capital and/or non-recurring in nature. Similarly, Mr. Corey explained that the parties agreed to eliminate certain expenses for holiday parties and a retirement dinner. Finally, Mr. Corey noted that Stucker Fork’s debt service reserve was almost fully funded, and therefore, it was appropriate to eliminate \$63,936 for funding the debt service reserve from Stucker Fork’s proposed revenue requirement.

After explaining the nature of the agreed-to adjustments, Mr. Corey offered testimony supporting Stucker Fork's plan to use cash on hand to fund future capital improvement projects because much of the cash balances are already encumbered or allocated. He then proposed a series of engineering or operational recommendations that were accepted by Stucker Fork and incorporated into the Settlement Agreement. Specifically, Stucker Fork is to 1. continue its efforts to find leaks and to monitor its lost water results on a quarterly basis, 2. include a meter replacement plan and funding proposals as part of its next rate case filing, 3. form a water conservation committee and prepare a water conservation plan by mid-2011, and 4. explore the potential benefits of becoming a member of InWarn. Mr. Corey concluded his settlement testimony by recommending that Stucker Fork be allowed to increase its rates by 12.1%, which would allow for an increase in annual operating revenues of \$378,547.

7. **Commission Discussion and Findings.** Settlements presented to the Commission are not ordinary contracts between private parties. *United States Gypsum, Inc. v. Ind. Gas Corp.*, 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 it serves the public interest.

According to the Settlement Agreement, the OUCC and Stucker Fork agreed that Stucker Fork's overall revenue requirements should be increased by 12.1% in order to produce \$378,547 in additional operating revenues, for a total revenue requirement of \$3,514,378. The parties also agreed that Stucker Fork should use its cash on hand to complete certain capital improvements that were identified in exhibits attached to the Settlement Agreement, including the development of a new source of groundwater supply in Jackson County, Indiana.

In addition, the Settlement Agreement recognizes that Stucker Fork will continue its efforts to eliminate the remaining subsidies between Stucker Fork's various classes of customers. The OUCC and Stucker Fork noted in the Settlement Agreement that the rationale for completing the updated COSS for this case; however, according to the Settlement Agreement, absent significant material changes in its consumer usage characteristics, Stucker Fork would use the updated COSS as the basis for additional moves toward eliminating any remaining rate subsidies in Stucker Fork's next rate case. Finally, the Settlement Agreement requires Stucker Fork to complete each of the four engineering or operational recommendations proposed by the OUCC.

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

Based on the evidence presented in this Cause, the Commission finds that the Settlement Agreement represents a comprehensive resolution of the issues presented in this matter, is in the public interest, and should be approved. We find, therefore, that Stucker Fork's overall rates should be increased by 12.1% so as to produce \$378,547 in additional operating revenues and that Stucker Fork should meet all of its commitments under the Settlement Agreement. Stucker Fork's revenue requirements approved herein are summarized as follows:

Operation & Maintenance	\$2,478,416
Debt Service	807,965
Debt Service Reserve	-
Replacements and Improvements	<u>480,000</u>
Total Revenue Requirements	3,766,381
Less: Interest Income	(176,267)
Penalties	(20,474)
Other Income	<u>(55,262)</u>
Total Net Revenue Requirements	<u>\$3,514,378</u>
Less: Revenues at Existing Rates	<u>3,135,831</u>
Revenue Increase Required	<u>378,547</u>
Percentage Increase	<u>12.1%</u>

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

1. The Joint Stipulation and Settlement Agreement is hereby approved and the terms and conditions thereof are incorporated herein as part of this Order. The parties shall comply with the provisions of the Joint Stipulation and Settlement Agreement.

2. Stucker Fork is hereby authorized to increase its rates and charges as provided in this Order.

3. Stucker Fork shall file with the Commission's Water/Sewer Division within twenty-one (21) days of the date of this Order a new tariff setting forth the rates and charges consistent with this Order. New rates and charges shall be effective on and after the date of filing the new tariff with the Water/Sewer Division.

4. Pursuant to Ind. Code 8-1-2-70, the Petitioner shall pay within twenty (20) days from the date of this Order into the Treasury of the State of Indiana, through the Secretary of this Commission, the following itemized charges, as well as any additional charges which were or may be incurred in connection with this Cause:

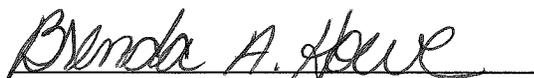
Commission Charges	\$1,053.54
Legal Advertising Charges	\$ 151.36
OUCG Charges	<u>\$5,052.64</u>
Total:	\$6,257.54

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

HARDY, ATTERHOLT, LANDIS, MAYS AND ZIEGNER CONCUR:

APPROVED: APR 14 2010

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



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

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE VERIFIED PETITION)
OF STUCKER FORK CONSERVANCY DISTRICT)
FOR APPROVAL OF A NEW SCHEDULE OF) CAUSE NO. 43780
RATES AND CHARGES FOR WATER SERVICE.)

JOINT STIPULATION AND SETTLEMENT AGREEMENT

This Joint Stipulation and Settlement Agreement ("Settlement Agreement") is entered into this 20th day of January, 2010, by and between Stucker Fork Conservancy District ("Stucker Fork") and the Office of the Utility Consumer Counselor ("OUCC"), who stipulate and agree for purposes of settling all matters in this Cause that the terms and conditions set forth below represent a fair and reasonable resolution of all issues in this Cause, subject to their incorporation in a final Indiana Utility Regulatory Commission ("Commission") Order.

Terms and Conditions of Settlement Agreement

1. **Requested Relief & Prefiled Evidence.** On September 9, 2009, Stucker Fork initiated this Cause by filing a Verified Petition with the Commission requesting authority to adjust its rates and charges for water service. Consistent with the Commission's Order in Cause No. 42752 (i.e Stucker Fork's prior rate case), Stucker Fork prefiled evidence requesting to further eliminate the rate subsidy between Stucker Fork's residential and non-residential customers. In support of its request, Mr. John Seever, CPA, presented a cost of service study ("COSS") and Mr. Richard Burch, P.E., filed supporting testimony and exhibits.

2. **Settlement.** After review, analysis, discussion, and negotiation, and as aided by their respective technical staff and experts, Stucker Fork and the OUCC have now agreed on terms and conditions set forth herein that resolve all issues between them in this Cause.

3. **Revenue Requirement, Rates, and Charges.** The parties agree that Stucker Fork should be authorized to increase its rates and charges for utility service to reflect ongoing net revenue requirements in an amount of \$3,514,378, resulting in an annual increase of

\$378,547 or 12.1% over Stucker Fork's existing rates and charges. Attached to this Settlement Agreement as Exhibit A are accounting schedules that reflect the agreed upon revenue requirement, as well as the rates and charges to be imposed, for Stucker Fork.

4. **Capital Improvements and Cash on Hand.** In its prefiled testimony and exhibits, Stucker Fork identified certain capital improvements that need to be made to ensure that Stucker Fork continues to provide safe and efficient water service. The parties agree that the projects identified in Exhibit B attached hereto should be completed as part of Stucker Fork's capital improvement plan. The parties further stipulate and agree that it is appropriate for Stucker Fork to utilize its cash on hand to complete the capital improvements identified in Exhibit C attached hereto, including specifically the development of a new source of groundwater supply in Jackson County, Indiana.

5. **Cost of Service Study.** The parties agree that the COSS complies with the principles set forth in the American Waterworks Association M-1 Manual and establishes a reasonable, rational basis to allocate the cost of serving Stucker Fork's various classes of customers. The parties further agree that the methodology used by Stucker Fork in its COSS in this Cause is the same methodology utilized in the COSS approved by the Commission in Cause No. 42752. While the methodology is unchanged, the parties recognize and agree that the COSS in this Cause was appropriately updated to reflect material changes in Stucker Fork's consumer usage characteristics since the last COSS was completed. Such changes include, among other things, that Stucker Fork's: (i) normalized industrial gallons consumed have increased by more than 37%; (ii) normalized wholesale gallons consumed have increased by approximately 7%; (iii) the total gallons sold increased by almost 19%; (iv) total revenues have increased by approximately 24%; and (v) pro forma operation and maintenance expenses have increased by more than 30%.

6. **Use of COSS in Next Rate Proceeding.** Absent significant and material changes in Stucker Fork's consumer usage characteristics, the parties agree that in its next rate

case Stucker Fork shall use the COSS that was presented in this case as the basis for additional moves toward eliminating any remaining subsidies among Stucker Fork's various customer classes.

7. **Operating and Maintenance.** The parties agree that Stucker Fork will continue its efforts to find leaks and to monitor its lost water results on a quarterly basis. Stucker Fork will also include a meter replacement plan and funding proposal as part of its next rate case filing, Stucker Fork will form a Water Conservation Committee and prepare a Water Conservation Plan by mid-2011. Stucker Fork also agrees to consider whether or not joining InWarn would be beneficial.

8. **Admissibility and Sufficiency of Evidence.** The parties hereby stipulate to the admission without objection of the Prefiled Direct and Rebuttal Testimony and Exhibits of John Seever and Richard Burch, as well as the Settlement Testimony of Richard J. Corey. The parties further agree that such evidence constitutes substantial evidence sufficient to support this Settlement Agreement and provides an adequate evidentiary basis upon which the Commission can make all findings of fact and conclusions of law necessary for the approval of this Settlement Agreement as filed.

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

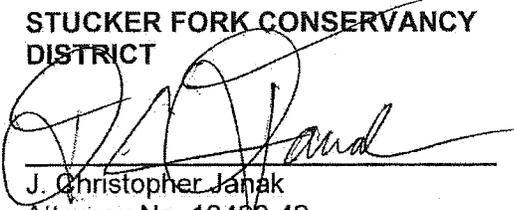
10. **Authority to Execute.** The undersigned have represented and agreed that they are fully authorized to execute the Settlement Agreement on behalf of their designated clients

who will hereafter be bound thereby.

11. **Approval of Settlement Agreement in its Entirety.** As a condition of this settlement, the parties specifically agree that if the Commission does not approve this Joint Stipulation and Settlement Agreement in its entirety and incorporate it into the Final Order as provided above, the entire Settlement Agreement shall be null and void and deemed withdrawn, unless otherwise agreed to in writing by the parties. The parties further agree that in the event the Commission does not issue a Final Order in the form that reflects the Agreement described herein, the matter should proceed to be heard by the Commission as if no settlement had been reached unless otherwise agreed to by the parties in a writing that is filed with the Commission.

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

**STUCKER FORK CONSERVANCY
DISTRICT**



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