ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF BLOOMINGTON, INDIANA, FOR APPROVAL OF A NEW SCHEDULE OF RATES AND CHARGES FOR WATER UTILITY SERVICE AND FOR AUTHORITY TO ISSUE REVENUE BONDS TO PROVIDE FUNDS FOR THE COSTS OF THE ACQUISITION AND INSTALLATION OF IMPROVEMENTS AND EXTENSIONS TO THE WATERWORKS OF BLOOMINGTON	)	**CAUSE NO. 43939** **APPROVED:** MAR 02 2011

BY THE COMMISSION:
Carolene R. Mays, Commissioner
Angela Rapp Weber, Administrative Law Judge

On August 18, 2010, the City of Bloomington, Indiana ("Bloomington") filed with the Indiana Utility Regulatory Commission ("Commission") its Petition for approval of a new schedule of rates and charges for utility service rendered by Bloomington's waterworks. The Petition also requested the issuance of up to $42 million of waterworks revenue bonds to finance the costs of improvements and extensions to Bloomington's waterworks utility. Additionally, Bloomington prefiled its testimony and exhibits constituting its case-in-chief on August 18, 2010. On August 20, 2010, Washington Township Water Corporation ("WTWC") filed its Petition to Intervene in this Cause and its Request for Simultaneous Water Tracker. The Presiding Officers granted WTWC's Petition to Intervene pursuant to a Docket Entry issued on August 31, 2010.

Pursuant to notice as provided by law, a public field hearing was held in this matter on November 3, 2010 at 6:00 p.m. at the Bloomington Monroe County Convention Center, 302 South College Avenue, Bloomington, Indiana. On November 16, 2010 WTWC prefiled its case-in-chief. On November 17, 2010, the Office of Utility Consumer Counselor ("OUCC") (together with Bloomington and WTWC, the "Parties") prefiled its case-in-chief. On November 24, 2010 the Parties filed a Notice of Settlement in this Cause. On December 10, 2010, the Parties submitted their Joint Stipulation and Settlement Agreement (the "Settlement Agreement") and testimony in support thereof.

Pursuant to notice given as provided by law, an evidentiary hearing was held in this matter on December 21, 2010 at 2:00 p.m. in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. At the evidentiary hearing, the Parties offered their respective cases-in-chief and evidence in support of the Settlement Agreement into evidence without objection.

Based upon applicable law and the evidence of record in this Cause, the Commission now finds:

1. **Notice and Jurisdiction.** Notice of the time and place of the hearings conducted by the Commission in this Cause was given as required by law. Bloomington owns and operates a municipally owned utility, which renders water utility service to the public. Bloomington is subject to Commission jurisdiction as prescribed by Indiana Code chs. 8-1-2 and 8-1.5-2. The Commission has jurisdiction over Bloomington and the subject matter of this Cause.

2. **Bloomington's Characteristics.** Bloomington has approximately 22,330 customer accounts both within and outside its municipal corporate boundaries. It serves Indiana University and ten wholesale customers. Bloomington's customer base is comprised of residential, commercial, industrial and other customers. Bloomington's existing rates and charges for water utility service were approved by the Commission in Cause No. 42858 on November 22, 2005.

3. **Test Year.** The test year for determining Bloomington's current revenues and expenses incurred in providing service to the public is the twelve months that ended February 28, 2010, adjusted for changes that are representative of future operations and sufficiently fixed, known and measurable for ratemaking purposes. The Commission finds the test year selected is sufficiently representative of Bloomington's normal operations to provide reliable data for ratemaking purposes.

4. **Requested Relief.** Bloomington requested approval of a phased-in, across-the-board rate increase of 54%. Specifically, upon the issuance of an Order in this Cause, Bloomington proposed to increase its rates by 22.34% in Phase I. In Phase II, Bloomington proposed to increase its rates by 25.88% upon the issuance of the proposed bonds. With respect to the bonds, Bloomington proposed to issue Waterworks Revenue Bonds in an amount not to exceed $42 million to complete certain capital improvements.

5. **Bloomington's Case-in-Chief.** Mr. Patrick Murphy, Director of the Bloomington Department of Utilities, provided an overview of the case on behalf of Bloomington. Mr. Murphy testified that the purpose of his testimony is to support the rate increase and capital projects, provide background on Bloomington's water utility, and provide a roadmap of Bloomington's case-in-chief. He testified the proposed increase will provide the necessary revenue that will allow the water utility to undertake the capital projects Bloomington proposes to finance with new bonds. Mr. Murphy testified to the general community support for the capital projects proposed by Bloomington. He sponsored a letter from Indiana University that supports the capital projects proposed by Bloomington. Mr. Murphy testified Bloomington met with its wholesale customers twice before proceeding with its rate increase. Mr. Murphy also testified Bloomington met with the OUCC before filing its case-in-chief.

Michael Bengtson, Bloomington's Assistant Director of Engineering, testified that the purposes of this case are to finance the proposed capital improvements and cover the increased operation and maintenance cost of Bloomington's water system. Mr. Bengtson testified it has been five years since the last rate increase and personnel and system input costs have increased

during that time. He also testified the proposed capital improvements must be undertaken to address operational problem events and stresses to the system. He added that Bloomington's water treatment plant, the Monroe Water Treatment Plant ("MWTP"), is currently operating at or near the Indiana Department of Environmental Management's ("IDEM") approved production capacity. Also, there is a general lack of sufficient operational margin and redundancy in Bloomington's water distribution system.

Mr. Bengtson identified and explained the proposed capital projects. The projects include the installation of a second finished water transmission main and construction of a new pump station and water tank. Mr. Bengtson sponsored *Petitioner's Exhibit MB-1*, a copy of an Early Warning Letter issued by IDEM, which warned the utility that the MWTP was exceeding 90% of its current rated capacity. He testified that Bloomington's water system was stressed at times, and the causes of the stress arose from the MWTP operating at or near its IDEM-approved production capacity and the lack of redundancy in Bloomington's water distribution system. He testified that expansion of the MWTP is necessary because water conservation alone would not be sufficient to reduce Bloomington's vulnerability to the operational problems he discussed in his testimony.

Mr. Bengtson testified the second finished water transmission main is necessary to protect against system failures and to enhance the security of the system through redundancy. Mr. Bengtson also testified that the new pump station is necessary to convey the additional flow from the expanded MWTP to Bloomington, and the new water tank will provide additional water storage capacity to assist with the provision of water during maximum-hour demands. He added that implementation of the proposed capital projects will not interrupt water service to Bloomington's customers. Mr. Bengtson stated the proposed capital projects are reasonable and necessary and will enable Bloomington to continue operating as a secure and reliable water source for its water utility customers.

Donnie Ginn, a licensed Professional Engineer and an Associate Vice President with Black & Veatch Corporation ("Black & Veatch"), testified to the expansion alternatives that were considered by Bloomington and the design, construction, and estimated costs of the proposed capital projects. Mr. Ginn testified that the MWTP is capable of supplying twenty-four million gallons per day ("mgd") with all filters in service and eighteen mgd with one filter out of service. He testified water demands have steadily increased and have approached the MWTP capacity of twenty-four mgd. In 2007 and 2008, Bloomington experienced water demands of 23.1 mgd and 23.2 mgd, respectively. Mr. Ginn said the Early Warning Letter also demonstrates Bloomington has a need for greater treatment capacity. Mr. Ginn testified several expansion alternatives, including the proposed capital projects, were evaluated by Black & Veatch. It was concluded that the proposed capital projects were the most cost-effective approach to expand capacity to meet current and future water demands and would provide a greater level of redundancy and reliability.

Mr. Ginn testified the proposed capital projects involve the expansion of the MWTP and intake facility from twenty-four mgd to thirty mgd with one filter out of service; installation of a second finished water transmission main consisting of 39,000 linear feet of twenty-four, thirty, and thirty-six inch pipe; construction of a two-million gallon storage tank and construction of a

twelve mgd (expandable to twenty-four mgd) pump station. He added that the proposed capital projects will enable Bloomington to continue to meet the Environmental Protection Agency's Long-Term Enhanced Surface Water Treatment Rules and Disinfectants and Disinfection Byproducts Rules. Mr. Ginn testified that the cost for the MWTP expansion is estimated at $14.8 million, and the estimate for the installation of the second finished water transmission main and construction of the new pump station and storage tank is $21.5 million. The estimated costs were developed based on current design information using recent local cost information as well as Black & Veatch's cost database for similar types of construction. He concluded that the proposed capital projects are reasonable and necessary and represent the best solution for Bloomington's treatment and transmission needs.

Bloomington's Mayor, Mark Kruzan, testified concerning the public policy and the rationale behind the rate increase, and provided a justification for the size of the rate increase. Mayor Kruzan testified the rate increase will allow Bloomington to obtain treatment capacity to serve its existing customer base, to provide capacity for the future needs of Bloomington's growing customer base, to achieve a level of system security through redundancy, to comply with environmental regulations, and to promote fiscal responsibility. He testified an expansion of the treatment and water delivery capabilities is needed to provide a cushion to serve demands that exceed its current maximum capacity. Mayor Kruzan also said the expansion will allow Bloomington to serve anticipated future demand for a number of years before another plant expansion is needed.

Mayor Kruzan stated a 54% increase would allow Bloomington to pay principal immediately rather than the alternative, which would have Bloomington make interest only payments at first before making future principal payments. He testified that structuring the bonds to pay principal immediately would save approximately $9.5 million over the same amortization period. He said part of his platform during his 2007 mayoral campaign was an expansion of the treatment plant and water system. Further, Bloomington's Utilities Service Board ("USB") and Common Council analyzed and studied the projects and alternatives over the past two years. The Common Council voted unanimously in favor of the rate increase, and there is support in the Bloomington community for the rate increase. Mayor Kruzan testified the Bloomington Commission on Sustainability also passed a resolution supporting the water plant expansion project.

Common Council and USB member Timothy Mayer also testified on behalf of Bloomington. Mr. Mayer is the Common Council representative to the USB. The USB governs Bloomington's Department of Utilities. Mr. Mayer sponsored the USB's resolution recommending a 54% rate increase to the Common Council and the ordinances adopting a rate increase and authorizing the issuance of bonds. Mr. Mayer explained the USB has general supervisory power over Bloomington's water utility and recommends rates and charges to the Common Council for the utility. He testified the Common Council is ultimately responsible for adopting the rates recommended by the USB. The USB extensively reviewed the capital projects and the need for each project and also studied alternatives for the capital projects. He testified the USB analyzed in great detail conservation and the role conservation would play in delaying or eliminating proposed capital projects. Mr. Mayer also sponsored a conservation plan prepared by Wittman Hydro Planning Associates as *Petitioner's Exhibit TM-1*.

Mr. Mayer testified to the necessity of a 54% rate increase. Initially, a 47% rate increase was reviewed, which consisted of the issuance of bonds that would not pay down principal in the early years of the amortization period. He said the USB determined that prudent fiscal policy required the principal to be paid down immediately rather than paying interest only for the first few years. He also testified the USB received extensive public input during its deliberation process. Both the Bloomington Economic Development Corporation and the Greater Bloomington Chamber of Commerce sent letters of support regarding the capital projects and the rate increase. *Petitioner's Exhibit TM-2*; *Petitioner's Exhibit TM-3*. He stated the USB approved a resolution recommending a 54% rate increase that then went before the Common Council. The Common Council also met extensively to discuss the rate increase. He testified the Common Council voted unanimously to approve a 54% rate increase.

John R. Skomp, a CPA with Crowe Horwath LLP, testified on behalf of Bloomington concerning the utility's proposed rates and financing. Mr. Skomp presented a statement of income and an adjusted statement of income that summarized the adjustments detailed in the statement of income part of his Rate and Financing Report, *Petitioner's Exhibit JRS-1*. Mr. Skomp testified that Phase I of the increase provides for a 23.34% rate increase over adjusted test year revenues. Phase II increase would be implemented on the issuance of the proposed bonds and would consist of a 31.66% rate increase over the Phase I revenues.

Mr. Skomp testified Bloomington's total annual revenue requirement is $15,224,398. He said the Phase I increase will consist of the operation and maintenance expenses, taxes other than income taxes, current debt service payments, annual extensions and replacements, and annual working capital. He testified that Phase II will be implemented at the time of issuance of the proposed bonds and will consist of the same items in Phase I with the additional annual debt service from the proposed bonds as well as the annual debt service reserve requirement funding. The total revenue requirement also includes a working capital requirement equal to two months operation and maintenance expenses. Mr. Skomp testified this is required by the bond ordinance for the Waterworks Revenue Bonds of 2006. As of February 28, 2010, Bloomington was deficient by $914,179 of its required two-month balance. Bloomington proposes to fund up the two-month balance over a three-year period. Mr. Skomp testified the proposed bonds are a reasonable method of financing the capital projects proposed by Bloomington.

Finally, Mr. Skomp provided *Schedule J-1*, attached to *Petitioner's Exhibit JRS-1*, which was an analysis of a new schedule of connection charges. In Cause No. 42858, Bloomington was required to perform data collection to calculate new connection charges and to request the establishment of new connection charges in its next rate case. He proposed a new schedule of connection charges based on Bloomington's cost of performing the work needed to connect a customer to the distribution system. According to *Schedule J-1*, the connection charge for a 5/8" to 1" line with a tap should be $848.14. According to *Schedule J-2*, the connection charge for a 5/8" to 1" line without a tap should be $776.18. Mr. Skomp testified all other connection charges will be calculated at cost.

6. **OUCC's Case-in-Chief.** Harold Riceman, an OUCC Water/Wastewater Division utility analyst, testified concerning Bloomington's proposed rate increase and specific

revenue requirements. Mr. Riceman testified the OUCC recommends that the Commission allow Bloomington to implement a phased-in across the board, cumulative rate increase of 50.57%. The Phase I increase of 15.45% proposed by the OUCC is to cover increased operating costs, current debt service obligations, depreciation and working capital. The proposed Phase II increase of 30.23% is to cover additional operating costs and debt service obligations on the proposed financing. Mr. Riceman recommended a reduction in Bloomington's proposed overall cumulative revenue requirement of $504,182, which included reductions in interest and other income, working capital, and modifications to Bloomington's adjustments for Phase I salaries, PERF and payroll tax. Mr. Riceman testified the OUCC accepted Bloomington's Phase I operating expense adjustment for capital and non-recurring costs and utility receipts tax and for the Water Conversation Program and Conservation Coordinator's benefits expense (transferred by the OUCC to Phase II). He also testified the OUCC had concerns about the $100,000 Water Conservation Program and suggested Bloomington should provide the detailed costs of this program to the Commission and the OUCC. He agreed with the amount of depreciation expense and amount of debt service and debt service reserve proposed by Bloomington.

Mr. Riceman testified the OUCC proposes that a true-up process be implemented after Bloomington issues its debt to adjust for any differences. Bloomington should file a true-up report with the Commission thirty days after issuance of the debt. Mr. Riceman recommended that if the amortization schedule is materially different from that provided by Bloomington, Bloomington should file a revised tariff with the Commission incorporating the differences in its rates.

Roger Pettijohn, an OUCC Water/Wastewater Division senior utility analyst, testified regarding, among other things, Bloomington's proposed capital project and operation and maintenance ("O&M") practices. He testified Bloomington's proposed capital project is needed, reasonable, and in the public interest. Mr. Pettijohn explained the second water transmission main will provide service redundancy, and expansion of the capacity of the MWTP will bring Bloomington within recommended engineering standards and also likely into IDEM capacity compliance. He also testified the OUCC agrees with Bloomington's expectation that the proposed capital project will satisfy IDEM's capacity concerns. Mr. Pettijohn recommended that the Commission approve Bloomington's proposed capital project.

Regarding Bloomington's O&M practices, Mr. Pettijohn testified that while Bloomington reported water loss percentages below 10% for 2008 and 2009, the direct water loss percentages would be 24.4% in 2009 and 22.5% in 2008 without Bloomington's adjustments for unbilled, authorized consumption. Mr. Pettijohn recommended that Bloomington submit a detailed explanation in its next Annual Report to the Commission for each water loss adjustment on page W-6 of Bloomington's 2008 and 2009 Annual Reports. He also testified that Bloomington's tap-related cost of materials, labor, and associated costs are reasonable and recommended that the Commission approve Bloomington's proposed tap fee increase. Finally, Mr. Pettijohn testified Bloomington satisfactorily demonstrated compliance with its obligation to maintain hydrant flushing and maintenance records and certain customer complaint records.

Edward Kaufman, an OUCC senior analyst, testified concerning Bloomington's proposed debt service and debt service reserve. Mr. Kaufman testified the interest rates proposed by

Bloomington for the open market bond issuance appear to be higher than what could be obtained through the Drinking Water State Revolving Fund loan program ("SRF"). He believed the "AAA" credit rating (plus twenty-five basis points to wrap a loan) available through the SRF could provide significant savings over the general obligation "A" rating (plus one hundred basis points) that Bloomington expects to receive through the open market. Mr. Kaufman recommended that Bloomington borrow from the SRF, if it can do so less expensively, or explain why it believes that it is not less costly to borrow through the SRF. He also recommended Bloomington explain its basis for assuming an interest rate that is one hundred basis points above the rate on "A" bonds.

Regarding Bloomington's debt service reserve, Mr. Kaufman testified Bloomington should be required to make monthly deposits to its debt service reserve once rates are in place and not wait until its closes on the proposed loan. He also testified Bloomington should inform the Commission and the OUCC if the debt service reserve fund ever becomes underfunded.

7. WTWC's Case-in-Chief. Mark Schmitter, the Manager of WTWC, testified on behalf of WTWC. Mr. Schmitter testified WTWC supports the proposed capital project and the requested rate increase. Mr. Schmitter stated that while WTWC's member owners were not necessarily pleased with the prospect of an increase in their water bills, they understood Bloomington must undertake the proposed capital project in order to maintain an adequate and reliable supply of water. He testified that all of WTWC's expenses have also increased and that he believes Bloomington made an effort to keep its costs down.

Regarding the proposed capital project, Mr. Schmitter testified he believes that the expansion of the MWTP and installation of a second transmission main are necessary and overdue. He explained an increase in MWTP's capacity is necessary to avoid potentially catastrophic problems, and WTWC supports the MWTP expansion because it will increase capacity without significantly interrupting service to Bloomington's customers. He also testified that the installation of a second transmission main will provide needed redundancy and will directly benefit the WTWC's customers by improving the reliability and security of their water supply.

8. Settlement Agreement and Supporting Evidence. The Settlement Agreement, a copy of which is attached hereto and incorporated by reference, provided the terms and conditions to which the Parties agreed with respect to the issues presented by Bloomington in its case-in-chief. Among other things, the Parties were able to agree to specifics concerning Bloomington's rates and charges and the issuance of water utility revenue bonds. The Parties stipulated and agreed Bloomington's test year operating revenues were $9,892,606, and Bloomington's current rates and charges are inadequate. The Parties further agreed Bloomington's rates and charges should be increased in two phases. Immediately upon the issuance of the Order in this Cause, the Parties agreed Bloomington should be authorized to increase its rates by 15.45% to produce $1,505,378 in additional operating revenues. After Bloomington closes on the proposed bonds, the Parties agreed Bloomington should be authorized to increase its rates by 30.23% to produce $3,400,252 in additional operating revenues.

The Parties agreed Bloomington shall, in its 2010 Annual Report, include specific calculations and assumptions utilized in determining any adjustments to Bloomington's reported water loss on page W-6 of the Commission's annual report form. These adjustments might include, without limitation, backwash water, hydrant flushing, fire fighting, and other authorized consumption. The Parties further agreed Bloomington will file a notice with the Commission and serve the remaining parties within ten days after the Conservation Coordinator position has been filled. Additionally, the Parties agreed Bloomington will file a notice with the Commission and serve the remaining parties within thirty days after the final implementation plan completed by the Conservation Coordinator has been approved and include a copy of the implementation plan in its notice filing.

In support of the Settlement Agreement, Bloomington filed the testimony of Mr. Murphy, Mr. Ginn, and Mr. Skomp. Mr. Murphy testified the Settlement Agreement is a reasonable resolution of the issues in this Cause. He also said the Settlement Agreement will allow Bloomington to expedite the proposed project, the issuance of its bonds and receipt of funds, the bidding of the project, and commencement of the proposed project. In order to address the OUCC's concerns regarding the conservation program, Mr. Murphy stated Bloomington agreed to file a notice with the Commission and serve all parties within ten days after the Conservation Coordinator has been hired. Also, Mr. Murphy testified Bloomington agreed to file a notice with the Commission and serve all parties within thirty days after final approval of the implementation plan prepared by the Conservation Coordinator.

Mr. Ginn testified that the Settlement Agreement is reasonable and in the public interest. He explained the Settlement Agreement allows Bloomington to avoid costly litigation over a relatively small percentage of the overall rate increase and provides the Parties with an opportunity to avoid post-hearing filings. Thus, Bloomington could issue bids sooner and take advantage of the current favorable construction market.

Mr. Ginn testified Bloomington did not pursue SRF financing because the SRF process could take up to a year and would generate additional costs. He restated Bloomington received an Early Warning Letter from IDEM and needs to increase its water treatment and transmission capacity as soon as possible. Further, the duration of the SRF process could expose Bloomington to potential inflationary construction pricing, and the SRF requirement that wages comply with the Davis-Bacon Act would expose Bloomington to additional labor costs. Mr. Ginn concluded it is in Bloomington's best interest to proceed with an open market bond issuance as quickly as possible.

Regarding the water loss calculation, Mr. Ginn testified Bloomington utilizes a non-revenue, water-based calculation to measure water loss, and this calculation has been recommended by the American Water Works Association (the "AWWA") since 2003. Bloomington subtracts the volume of billed water from volume of raw water pumped to the plant to determine the volume of non-revenue water. Bloomington then subtracts an estimate of unbilled, authorized consumption from the volume of non-revenue water to determine the volume of water loss. Unbilled, authorized consumption consists of that consumption used for firefighting, street cleaning, and main flushing, among other uses. Using such a calculation, Bloomington determined that its water loss percentages in 2008 and 2009 were 8.03% and

9.65%, respectively. Mr. Ginn testified Bloomington's water loss calculation is consistent with that recommended by the AWWA, and the volume of unbilled, authorized consumption is estimated using prudent engineering volume estimates. He concluded Bloomington's estimates for its unbilled authorized consumption are sound and when excluded from the volumes that have traditionally been viewed as water loss, Bloomington's true water loss percentages are below the Commission water loss percentage threshold of 15%.

Mr. Skomp testified the proposed accounting and financing adjustments made by the OUCC are reasonable. He also provided additional information regarding the financing options Bloomington plans to pursue with regard to the issuance of the proposed bonds. Mr. Skomp said he did not believe the SRF loan program and its Pooled Financing option are as good of an option as the open market for bonds at this time. Mr. Skomp testified that if Bloomington used the Pooled Financing option, it could not participate in the program until Fall 2011. He testified that while the SRF Pooled Financing option could result in $790,000 savings over the twenty-year life of the bonds, the greatest risk is that construction costs will increase over the next year. He added that if construction costs, which are currently estimated at $36.3 million, were to rise by only 2.2% during that time, the estimated savings from the SRF Pooled Financing would be eliminated ($36.3 million x 2.2% = $798,600).

Mr. Schmitter provided settlement testimony on behalf of WTWC. He said he supports the Settlement Agreement because the capital projects proposed by Bloomington are reasonable and because it will be able to begin construction in a more timely fashion. Mr. Schmitter also testified WTWC has benefited from Bloomington's water quality and the active flushing program that Bloomington uses. Mr. Schmitter explained that although the flushing program may account for a large portion of the lost or unbilled water, it is also a cost effective way of maintaining water quality.

9. <u>Commission Discussion and Findings</u>. Pursuant to the Commission's procedural rules and prior determinations, a settlement agreement will not be approved by the Commission unless it is supported by probative evidence. 170 IAC 1-1.1-17. Settlement agreements 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, Inc.*, 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)). Therefore, before the Commission can approve the Settlement Agreement submitted by the Parties, 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 the applicable portions of Indiana Code ch. 8-1-2 and Indiana Code ch. 8-1.5-3 and that such agreement serves the public interest.

Upon review of the evidence of record, the Commission finds that Bloomington's proposed capital improvement plan is reasonably necessary to remedy the issues with Bloomington's current water treatment and transmission facilities. Expanded water treatment and transmission facilities will enable Bloomington to provide adequate services in accordance with Indiana Code § 8-1.5-3-8. It will also address Bloomington's capacity issues identified in the Early Warning Letter. The Commission also finds the proposed bond issue in an amount not to exceed $42 million to be a reasonable manner in which to finance the expanded water treatment and transmission facilities. Thus, the proposed bond issue should be approved.

Further, based on the evidence of record, the Commission finds Bloomington's current rates and charges are inadequate to provide for Bloomington's annual revenue requirement pursuant to Indiana Code § 8-1.5-3-8. Accordingly, the Commission finds Bloomington should be authorized to increase its rates by 15.45% to produce a net revenue increase of $1,505,378 in Phase I. Bloomington's pro forma test year operating revenues at proposed rates will be $11,397,984 during Phase I. In addition, the Commission finds Bloomington should be authorized to increase its rates by 30.23% to produce an additional $3,400,252 in operating revenues in Phase II over the Phase I pro forma revenues. Pro forma test year operating revenues at proposed Phase II rates will be $14,798,239. Bloomington's net revenue requirements are illustrated below:

Revenue Requirements (in thousands)

	Phase I	Phase II
Operation and Maintenance Expense	6,323	6,482
Taxes Other Than Income	372	397
Depreciation Expense	1,951	1,951
Working Capital	142	142
Payment in Lieu of Taxes	-	-
Debt Service	2,878	5,834
Debt Service Reserve	-	233
Total Revenue Requirement	11,665	15,038
Less: Interest Income	(15)	(15)
Other Income	(273)	(273)
Add: Other Expenses	-	-
Net Revenue Requirement	11,377	14,751
Less: Revenue at Current Rates	9,744	11,249
Other Revenues at Current Rates	149	149
Net Revenue Increase Required	1,484	3,353
Divide by Revenue Conversion Factor (100%-1.4%)	0.986	0.986
Calculated Increase	1,505	3,400
Calculated Percentage Increase	15.45%	30.23%

Additionally, Bloomington proposed a new schedule of connection charges to be implemented in this Cause. Mr. Skomp provided testimony and evidence supporting his calculation of the connection charges. The Parties stipulated and agreed that Bloomington's proposed connection charges are reasonable and should be approved. The Commission finds the schedule proposed by Bloomington for its connection charges to be reasonable, cost-justified, and in the public interest.

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

10. **True Up.** As discussed previously, the actual cost of debt service will not be known precisely until sometime after Bloomington issues its proposed bonds. Within thirty days of closing on the proposed bonds, Bloomington shall file a true-up report with the Commission and serve a copy on the parties of record. The true-up report shall use the same calculation methodologies used to calculate the revenue requirement agreed to by the Parties. The true-up report shall provide the following information: the actual principal amount borrowed, the interest rate, the term of the bonds, the actual average annual debt service requirements, the actual average annual debt service reserve requirement, and the impact that any difference would have on Bloomington's rates and charges.

If the average annual debt service requirements are lower than those provided for in the authorized rates, and the OUCC or WTWC deems the difference to be material, the OUCC or WTWC shall have fifteen days from service of Bloomington's true-up report in which to request that Bloomington file an amended tariff giving prospective effect to Bloomington's actual average debt service requirements, to take effect at the start of Bloomington's next billing cycle. Bloomington has agreed not to oppose such a request. Bloomington shall file its amended tariff within fifteen days of receiving such a request from the OUCC or WTWC.

Finally, pursuant to Indiana Code § 8-1-2-61.6, Bloomington notified its wholesale customers upon filing its Petition for a change in rates. As a result, and also pursuant to Indiana Code § 8-1-2-61.6, a number of wholesale customers (specifically, Rhorer, Harrel and Schacht Roads Water Corp.; B&B Water Project, Inc.; Southern Monroe Water Corp.; Van Buren Water, Inc. and WTWC) requested simultaneous rate relief for their cost of purchased water in conjunction with the relief requested by Bloomington. The conclusion of this case resulted in a two phase rate increase for which the second phase will not take place until some future unknown date. In order for the purchased water trackers related to the Phase II rate increase to be based on current purchased water volumes and customer usage, the wholesale customers will need to file a new thirty-day filing to recover the purchased water cost increase related to the Phase II rate increase. Therefore, Bloomington shall notify the above-listed wholesale customers thirty days before it intends to file its true-up report and the associated Phase II rate increase to provide its wholesale customers with the opportunity to file a water tracker under the Commission's thirty-day filing procedure and receive simultaneous rate relief.

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

1. The Settlement Agreement is approved consistent with Finding Paragraph No. 9.

2. Bloomington shall be and hereby is authorized to increase its rates and charges for water utility service across-the-board by 15.45% in Phase I over adjusted test year revenues in order to increase annual operating revenues by $1,505,378 to produce total annual operating revenues of $11,397,984.

3. Bloomington shall be and hereby is authorized to increase its rates and charges for water utility service in Phase II across-the-board by 30.23% over Phase I pro forma revenues in order to increase annual operating revenues by $3,400,252 to produce total annual operating revenues of $14,798,239.

4. Bloomington shall be and hereby is authorized to implement its schedule of connection charges as proposed in *Schedule J-1* to *Petitioner's Exhibit JRS-1*.

5. Bloomington shall, in its 2010 Annual Report, include specific calculations and assumptions utilized in determining any adjustments to Bloomington's reported water loss on page W-6 of the Commission's annual report form. These adjustments might include, without limitation, backwash water, hydrant flushing, fire fighting, and other authorized consumption.

6. Bloomington shall notify the Commission and serve all parties within ten days of its hiring of a Conservation Coordinator. Bloomington shall notify the Commission and serve all parties within thirty days after final approval of the implementation plan prepared by the Conservation Coordinator, as provided in Finding Paragraph No. 8.

7. Bloomington shall file with the Commission's Water/Sewer Division a new schedule of rates and charges before placing into effect both rate increases and the new schedule of connection charges authorized herein, which schedules, when approved by the Water/Sewer Division shall be effective and shall cancel all previously approved schedules of rates and charges.

8. Bloomington shall be and hereby is authorized to issue waterworks revenue bonds in an amount not to exceed $42 million as provided in Finding Paragraph No. 9 hereof.

9. Bloomington shall pay the following itemized charges within twenty days of the date of this Order into the Treasury of the State of Indiana, through the Secretary of the Commission:

In accordance with Indiana Code § 8-1-2-70, Petitioner shall pay the following itemized charges within twenty days from the date of the Order to the Secretary of this Commission, as well as any additional costs that were incurred in connection with this Cause:

Commission Charges:	$ 2026.37
OUCC Charges:	$ 5766.35
Legal Advertising Charges:	$ 283.20
Total:	$ 8075.92

10. In accordance with Indiana Code § 8-1-2-85, Bloomington shall pay to the Secretary of the Commission twenty-five cents ($0.25) for every one hundred dollars ($100) of financing proceeds received. This payment shall be made within thirty days of the receipt of the financing proceeds authorized herein.

11. Bloomington shall file the true-up report and provide notification to wholesale customers as provided in Finding Paragraph No. 10 hereof.

12. This Order shall become effective on and after the date of its approval.

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

APPROVED: MAR 02 2011

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

Brenda A. Howe

Brenda A. Howe
Secretary to the Commission

FILED
December 10, 2010
INDIANA UTILITY
REGULATORY COMMISSION

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF BLOOMINGTON, INDIANA, FOR APPROVAL OF A NEW SCHEDULE OF RATES AND CHARGES FOR WATER UTILITY SERVICE AND FOR AUTHORITY TO ISSUE REVENUE BONDS TO PROVIDE FUNDS FOR THE COSTS OF THE ACQUISITION AND INSTALLATION OF IMPROVEMENTS AND EXTENSIONS TO THE WATERWORKS OF BLOOMINGTON	)	**CAUSE NO. 43939**

JOINT STIPULATION AND SETTLEMENT AGREEMENT

On August 18, 2010, the City of Bloomington, Indiana ("Bloomington") filed with the Commission its Petition initiating this Cause. On the same day, Bloomington filed its Case-in-Chief in this Cause. On November 16, 2010, the Washington Township Water Corporation ("WTWC") filed its Case-in-Chief. On November 17, 2010, the Office of Utility Consumer Counselor (the "OUCC") filed its Case-in-Chief. Based upon arms-length negotiations between Bloomington, WTWC and the OUCC (collectively, the "Parties"), the Parties have reached an agreement with respect to all of the issues before the Indiana Utility Regulatory Commission (the "Commission") in this Cause. The Parties therefore stipulate and agree for purposes of resolving all of the issues in this Cause, to the terms and conditions set forth in this Joint Stipulation and Settlement Agreement (the "Settlement").

1. **Stipulated Rates and Revenues.** The Parties stipulate and agree that Bloomington's test year operating revenues were $9,892,606, as depicted on Schedule 4 to the testimony of OUCC witness Harold H. Riceman. The Parties stipulate and agree that Bloomington's current rates and charges are inadequate and that Bloomington's rates and charges should be increased immediately upon the issuance of a Commission Order on an across-the-board basis by 15.45% so as to produce $1,505,378 in additional annual operating revenue. The Parties further stipulate and agree that Bloomington should be authorized to further increase its rates and charges after closing on the Bonds (as defined in Section 3 below) by an additional 30.23% on an across-the-

board basis to produce and additional $3,400,252 in annual operating revenue. After adjustment (including the issuance of the Bonds), the Parties stipulate and agree that Bloomington's pro forma test year operating revenues will be $11,397,984 for Phase One and $14,798,239 for Phase Two. The Parties further stipulate and agree that Bloomington's revenue requirements for the Phase One and Phase Two rate increases are depicted on Schedule 4 to the testimony of Mr. Riceman. The Parties stipulate and agree that the rate increases provided herein are just and reasonable and should be approved.

2. **Phased Rates.** The Parties agree that the implementation of Bloomington's rate increase in two phases is reasonable. The Phase One rate increase will take effect on the date of the issuance of the Final Order in this Cause. The Phase Two rate increase will take effect on the date that Bloomington files its true-up report as set forth in Paragraph 3. Ind. Code 8-1.5-3-8(h) provides that the Commission shall grant a request by a municipally owned utility that an increase in rates and charges not be effective until after the occurrence of a future event, if the municipal legislative body so requests. Bloomington has presented testimony and exhibits in this Cause to support phased rates, and the Parties hereby agree to phased rates.

3. **Stipulated Financing Matters; True-Up.** The Parties stipulate and agree that Bloomington shall be authorized to issue water utility revenue bonds (the "Bonds") in an amount not to exceed the estimated $42 Million principal amount as described in the testimony of Bloomington's witness John R. Skomp. The Parties agree that the actual principal amount of the Bonds, the interest rate at which the Bonds will be sold and the actual cost of annual debt service associated with the project will not be known precisely until after Bloomington has closed on its Bonds. Since the figures contained in Petitioner's prefiled evidence are estimates rather than actual amounts, the Parties agree that Bloomington may be required to true-up those amounts after Bloomington closes on its financing. Specifically, within thirty (30) days of closing, the Parties agree that Bloomington should file a true-up report with the Commission and serve all parties of record. The true-up report should include the same methodologies reflected in the evidence in this proceeding and state the following: the actual principal amount borrowed, the interest rate, the term of the Bonds, the actual average annual debt service and debt service requirements, the actual annual debt service reserve requirement and the impact that any

difference would have on Bloomington's rates. If WTWC or the OUCC determine the difference between the estimated and actual costs is material, either shall notify Bloomington of this determination within fifteen calendar (15) days of Bloomington's filing of the true-up report, and Bloomington shall file a revised rate schedule and tariff without opposing such request.

4. **Connection Charges.** The Parties stipulate and agree that Bloomington shall be authorized to implement the schedule of connection charges set forth on Schedule J-1 to Petitioner's Exhibit JRS-1. The Parties stipulate and agree that the connection charges provided therein are just and reasonable and should be approved.

5. **Other Matters.** The Parties stipulate and agree that Bloomington shall, in its 2010 IURC Annual Report, include specific calculations and assumptions utilized in determining any adjustments to Bloomington's reported water loss on page W-6 of the IURC's annual report form. These adjustments might include, without limitation, backwash water, hydrant flushing, fire fighting, other authorized consumption, etc. The Parties further stipulate and agree that Bloomington will file a notice with the Commission and serve all parties within ten (10) days after the Conservation Coordinator position has been filled. Additionally, the Parties stipulate and agree that Bloomington will file a notice with the Commission and serve all parties thirty (30) days after the final implementation plan has been completed and include in its notice filing the finalized implementation plan.

6. **Submission of Evidence.** The Parties stipulate to the admission into evidence in this Cause of the Parties' previously filed cases-in-chief (Bloomington's case-in-chief, as corrected; WTWC's case-in-chief; and the OUCC's case-in-chief) and the Settlement Testimony of Patrick Murphy, John R. Skomp and Donnie Ginn on behalf of Bloomington and Mark Schmitter on behalf of WTWC. Further, each Party waives cross-examination of the other's witnesses with respect to such testimony. The Parties shall not offer any further testimony or evidence in this proceeding, other than this Settlement and the above-identified testimony and exhibits. If the Commission should request additional evidence to support the Settlement, the Parties shall cooperate to provide such requested additional evidence.

7. **Proposed Final Order.** The Parties stipulate and agree to the issuance by the Commission of the proposed order (the "Proposed Order") attached hereto and made a part hereof as Exhibit 1. The Parties stipulate and agree that the terms of this Settlement and the findings and ordering paragraphs of the Proposed Order represent a fair, reasonable, and just resolution of all the issues in this Cause, provided they are approved by the Commission in their entirety without material change. All the terms and agreements contained in the Proposed Order are incorporated herein by reference and are accepted by each of the Parties as if fully set forth herein.

8. **Sufficiency of Evidence.** The Parties stipulate and agree that the evidentiary material identified immediately above constitutes a sufficient evidentiary basis for the issuance of the Proposed Order as a final order by the Commission adopting the terms of this Settlement, and granting the relief as requested herein by Bloomington and agreed to by WTWC and the OUCC.

9. **Commission Alteration of Agreement.** The concurrence of the Parties with the terms of this Settlement is expressly predicated upon the Commission's approval of this Settlement. If the Commission alters this Settlement in any material way, unless that alteration is unanimously and explicitly consented to by the Parties, this Settlement shall be deemed withdrawn.

10. **Authorization.** The undersigned represent that they are fully authorized to execute this Settlement on behalf of their respective clients or parties, who will be bound thereby.

11. **Non-Precedential Nature of Settlement.** The Parties stipulate and agree that this Settlement and the Proposed Order shall not be cited as precedent against the OUCC, WTWC, or Bloomington in any subsequent proceeding or deemed an admission by any party in any other proceeding, except as necessary to enforce the terms of this Settlement or the final order to be issued in this Cause before the Commission or any court of competent jurisdiction on these particular issues and in this particular matter. This Settlement is solely the result of compromise in the settlement process and, 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 herein in any future regulatory or other proceeding, and, failing approval by the Commission, shall not be admissible in any subsequent proceeding.

12. **Counterparts.** This Settlement may be executed in one or more counterparts (or upon separate signature pages bound together into one or more counterparts), all of which taken together shall constitute one agreement.

Respectfully submitted,

David T. McGimpsey (21015-49)
Casey M. Holsapple (27165-49)
E. Moses Vejil (28819-49)

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