ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF THE CITY OF SOUTH BEND, INDIANA REGARDING ITS RATES AND CHARGES FOR WATER SERVICE IN COMPLIANCE WITH THE STIPULATION IN CAUSE NUMBER 43711 AND REGARDING NONRECURRING CHARGES	))))))	CAUSE NO. 43979 APPROVED: NOV 09 2011

ORDER OF THE COMMISSION

Presiding Officers:
Carolene Mays, Commissioner
Gregory R. Ellis, Administrative Law Judge

On December 22, 2010, City of South Bend, Indiana ("Petitioner" or "South Bend") filed its Petition with the Indiana Utility Regulatory Commission ("Commission") in compliance with its stipulation in Cause No. 43711 to file a rate petition.

On February 18, 2011, Petitioner filed the testimony and exhibits of John R. Skomp, which constituted its case-in-chief. On February 22, 2011, Petitioner submitted workpapers in support of its Petition. On May 12, 2011, the Indiana Office of Utility Consumer Counselor ("OUCC") filed a Notice of Settlement and Motion for Modification of the Remaining Procedural Schedule, which was granted by the Commission's Docket Entry dated May 13, 2011. On June 30, 2011, Petitioner filed its Submission of Stipulation and Settlement Agreement. Also on June 30, 2011, the OUCC filed the settlement testimony of Mr. Charles E. Patrick.

Pursuant to notice duly published as required by law, proof of which was incorporated into the record by reference and placed in the official files of the Commission, a settlement hearing was held on August 18, 2011, at 9:30 a.m., in Hearing Room 222, 101 West Washington Street, Indianapolis, Indiana. At the hearing, Petitioner and the OUCC appeared and participated. The parties' evidence, along with the Stipulation and Settlement Agreement, were entered into evidence without objection. No members of the general public appeared.

Based upon the applicable law and the evidence of record, the Commission finds as follows:

1. **Statutory Notice and Commission Jurisdiction.** Due, legal and timely notice of the hearing in this Cause was given and published by the Commission as required by law. South Bend is a municipality that owns and operates plant and equipment within the State of Indiana for the production, transmission, delivery and furnishing of water to the public within and around the City of South Bend, Indiana. South Bend is a "municipally owned utility" as defined by Ind. Code § 8-1-2-l(h), subject to the Commission's jurisdiction as defined in the Public Service

Commission Act, as amended, Ind. Code ch. 8-1-2 and Ind. Code art. 8-1.5. Therefore, the Commission has jurisdiction over South Bend and the subject matter in this Cause.

2. **Petitioner's Characteristics.** Petitioner owns and operates a municipal water works facility serving approximately 42,000 retail customers located within the corporate boundaries of South Bend as well as unincorporated areas of St. Joseph County. Petitioner's Division of Water Works operates the utility under the oversight of the City's Waterworks Board.

3. **Background.** In Cause No. 43711, Petitioner sought and obtained approval to borrow money from the Indiana Bond Bank to finance a number of improvements. In that Cause, the OUCC noted that Petitioner had outstanding bonds which were issued in 1997 (the "1997 Bonds") upon which Petitioner will make its final payment on January 1, 2012. This will cause a reduction in Petitioner's debt service of approximately $2.0 million annually. The OUCC recommended if Petitioner did not initiate a rate case by December 31, 2011, then Petitioner's rates should be automatically reduced. At the evidentiary hearing, Petitioner "stipulated on the record that it would file a rate petition during calendar year 2010 which would reflect the impact of the 1997 bonds being paid off, with any resulting rates to be made effective January 1, 2012." The instant Petition was filed to satisfy this stipulation.

4. **Relief Requested.** South Bend indicated in its Petition that it was not seeking a change in basic rates and charges for water service, but would be requesting certain modifications to its schedule of nonrecurring charges. However, South Bend indicated in its Case-in-Chief that it had decided to postpone any changes to its tariffs and thus would not be presenting evidence or requesting a change to its non-recurring charges which are currently on file with the Commission. Thus, South Bend requests that the Commission not require a reduction or otherwise adjust South Bend's rates and charges.

5. **Petitioner's Case-in-Chief.** John R. Skomp, a Partner with Crowe Horwath LLP, testified on behalf of Petitioner. Mr. Skomp sponsored the February 18, 2011 Revenue Requirements Report ("Report"), which analyzed Petitioner's current pro forma revenue requirement. Mr. Skomp testified that this analysis demonstrates that Petitioner's current rates and charges do not need to be reduced and, in fact, the expected pro forma revenue requirements for the years following the 2011 calendar year are projected to be in excess of the expected revenues.

Mr. Skomp testified that Petitioner currently has three bond issues and three State of Indiana Revolving Fund ("SRF") Loans outstanding (collectively, the "Current Bonds"). He stated that the 1997 Bonds will be paid off by the year 2012 and the estimated average annual debt service for the years 2012 to 2013 will be approximately $1.5 million.

He explained that at the time each of the Current Bonds were issued, the surety policies were rated in the highest rating category ("Aaa" by Moody's Investor Services or "AAA" by Standard & Poor's) as required by their respective bond ordinances. Since then, due to market conditions outside the control of Petitioner, all four surety policies were downgraded. As a result, Petitioner could be required to cash fund the debt service requirement on the 2006 Bonds in

accordance with Petitioner's Financial Assistance Agreement with the SRF loan program, since the policy would now be deemed a Disqualified Surety. Mr. Skomp stated that the SRF program currently holds three of the Current Bonds and, as a condition for Petitioner to issue parity debt, the bond ordinances for the SRF loans require Petitioner to obtain their consent prior to issuing any new parity debt. He said that it is anticipated that the SRF program would require Petitioner to cash fund the Disqualified Surety policies in order to obtain their consent on any issuance of additional debt. He indicated that the SRF program could also enforce the requirements of the Financial Assistance Agreement at any time that would require Petitioner to fund the reserve requirement for the amount of the Disqualified Surety within twelve months.

Mr. Skomp discussed the options which have been explored by other utility companies that have experienced a downgrade in the rating of their debt service reserve surety providers. He said that the option that has been offered by the SRF to other utilities is the build up of a cash funded debt service reserve fund over a five year period. He explained that while the surety policy will remain in place, the SRF has required an additional protection of a cash funded reserve since the rating of the current surety provider indicates that there is greater risk that the provider will not be able to perform if called upon in the case of a default on the bond payment. Mr. Skomp stated that the additional amount needed to properly fund Petitioner's debt service reserve in the year 2013 is just over $1 million. He said that Petitioner will request of the SRF program to fund the reserve requirement of the Disqualified Surety within five years, but consent of SRF would be required for this time period and there is no guarantee that the SRF program would agree to the requested time period.

Mr. Skomp testified that Petitioner is not requesting to issue additional debt in this Cause. However, the SRF program could request Petitioner to begin cash funding of the reserve requirement of the Disqualified Sureties at any time. He stated that Petitioner is currently working on long-term capital planning that may well include the issuance of significant debt within the next three years, and it is therefore important for Petitioner to begin preparing for the issuance of any future debt by demonstrating that the reserves for the Current Bonds are secure.

Mr. Skomp stated that the twelve months ended August 31, 2010 has been used as the test year in this Cause and fairly represents Petitioner's normal operations. He opined that, with the appropriate adjustments as shown on Exhibit C and Schedule C-1, the test year used in this Cause reasonably reflects current operations and is sufficiently reliable.

Mr. Skomp provided a summary of the adjustments made to Petitioner's operating revenues and expenses. He testified that Petitioner's total revenue requirement is $14,500,149. He said that fully funding the total revenue requirement would necessitate a revenue increase of $568,126, but Petitioner is not requesting a rate increase at this time. He testified that the exhibits provided show that the estimated revenue requirements in 2012 are in excess of the estimated operating revenues and thus Petitioner should not be required to reduce or otherwise adjust its rates and charges.

6. **Settlement Agreement.** On May 12, 2011, the OUCC filed a Notice of Settlement indicating that the parties had reached settlement of all outstanding issues. On June 30, 2011, South Bend filed a Stipulation and Settlement Agreement ("Settlement Agreement")

between South Bend and the OUCC which provides a settlement of all issues in this Cause. Under the terms of the Settlement Agreement, South Bend's existing basic rates and charges shall remain unchanged. Two months prior to South Bend filing its next base rate case, South Bend will submit to the OUCC statements of the cash balances at that time. The parties further agreed that the obligation from Cause Nos. 42779 and 42779-S1 to file a cost of service study with Petitioner's next rate case survives this case and will apply to Petitioner's next base rate case.

7. **Testimony in Support of the Settlement Agreement.** The OUCC presented the testimony of Charles E. Patrick, Utility Analyst with the OUCC, in support of the Settlement Agreement. Mr. Patrick testified that after reviewing Petitioner's filing and conducting a field audit, the OUCC identified several accounting adjustments that should be made to Petitioner's request. He stated that the OUCC's proposed net revenue requirement of $13,731,190 differs from Petitioner's proposed net revenue requirement of $14,508,260 due to differences in operating expenses, taxes other than income, depreciation, payment in lieu of taxes, debt service, debt service reserve, jobbing and contract revenue, rents from water property, interest income, miscellaneous other income and IURC fee. He stated that accepting all of the OUCC's adjustments would result in a 1.21% decrease to Petitioner's existing rates and charges.

Mr. Patrick summarized the parties' resolution of various revenue and expense adjustments. He stated that during the course of its investigation, the OUCC met several times with Petitioner and ultimately reached a settlement on all outstanding issues. He discussed the primary terms of the Settlement Agreement and explained why the OUCC agreed that Petitioner's existing basic rates and charges should remain unchanged. He stated that the OUCC learned that Petitioner plans to file a financing case later this year. As part of that case and Petitioner's next rate case, Petitioner intends to request approval for several capital projects including a new office building to house customer service, administration, and billing and seven major main replacement projects at an estimated cost of $5,380,000. He provided a copy of Petitioner's 5-Year Capital Improvement Plan, which projects a cost of $26,690,000 over the next five years. According to Mr. Patrick, the OUCC's proposed adjustments would result in a savings of $1.68 per year or $2.04 per year to the average residential customer residing inside or outside South Bend's limits, respectively. He stated that the parties agreed that under the principles of gradualism, it is in the public interest to allow Petitioner to retain these funds in order to prefund these future projects and minimize any future increase in rates.

Mr. Patrick discussed the other benefits of the Settlement Agreement. He stated that a review of Petitioner's statement of cash balances prior to Petitioner's next rate case filing would ensure that capital expenditures are being made from existing funds. Specifically, ratepayers are being asked to pay for improvement projects that ultimately result in increased efficiency and enhanced reliability. He said a review of these statements will ensure funds are expended timely and that the work is proceeding as planned. In addition, Mr. Patrick stated that Petitioner has agreed to conduct a cost of service study as part of its next rate case, which will ensure ratepayers pay a fair share of those costs attributed to their rate class.

Mr. Patrick recommended approval of the Settlement Agreement in its entirety. He stated that the parties worked hard to reach a settlement that not only provided Petitioner with an

opportunity to earn sufficient revenues to meet their revenue requirements, but also resulted in rates that are fair, just, and reasonable. Ensuring the utility runs efficiently and reliably, while also minimizing the future rate impact, will also benefit Petitioner's ratepayers.

8. **Commission Discussion and Findings.** 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 Ind. Code ch. 8-1-2, and that such agreement serves the public interest.

The evidence of record indicates that the Settlement Agreement is the result of arms-length negotiation between Petitioner and the OUCC. The parties reached agreement on a number of issues and concerns raised by the OUCC. The evidence presented demonstrates that the public interest will be served by approving South Bend's Petition, as modified by the Settlement Agreement between the Parties. Specifically, the Settlement Agreement benefits Petitioner's ratepayers by lowering the rate impact of planned future capital projects. Therefore, based on the evidence presented, the Commission finds the Petitioner's request that the Commission not require South Bend to adjust its existing rates and charges is reasonable. Accordingly, we conclude that the Settlement Agreement is reasonable, just and consistent with the purpose of Ind. Code ch. 8-1-2 and serves the public interest.

We have reviewed the terms of the parties' Settlement Agreement and hereby approve them. A copy of the Settlement Agreement is attached hereto and made a part of this Order. The parties agree 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, we find 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).

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

1. The Settlement Agreement, attached to this Order as Attachment A, is approved

in its entirety.

2. Petitioner's existing base rates and charges shall remain unchanged.

3. In accordance with Ind. Code § 8-1-2-70, Petitioner shall pay the following itemized charges within 20 days from the date of this Order, into the Treasury of the State of Indiana, through the Secretary of the Commission.

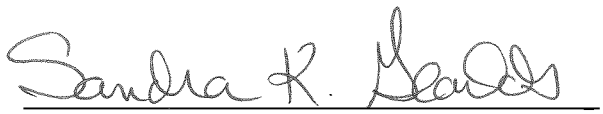
Commission Charges	$ 1,319.44
OUCC Charges	$ 4,423.67
Legal Advertising Charges	$ 171.37
Total	$ 5,914.48

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

ATTERHOLT, BENNETT, LANDIS, MAYS AND ZIEGNER CONCUR:

APPROVED: NOV 09 2011

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



Sandra K. Gearlds
Acting Secretary to the Commission

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF THE CITY OF SOUTH BEND, INDIANA REGARDING ITS RATES AND CHARGES FOR WATER SERVICE IN COMPLIANCE WITH THE STIPULATION IN CAUSE NUMBER 43711 AND REGARDING NONRECURRING CHARGES	)	CAUSE NO. 43979

STIPULATION AND SETTLEMENT AGREEMENT

The City of South Bend, Indiana ("South Bend") and the Office of Utility Consumer Counselor ("OUCC"), collectively, the "Parties," have met through their respective representatives, exchanged information, discussed the evidence of record, and considered the various pleadings filed by the Parties in this Cause. The result of such discussions among the Parties is a settlement of all issues in this Cause as described by this Stipulation and Settlement Agreement (the "Settlement").

The Parties believe that the record of this Cause, including the petition, prefiled evidence and workpapers, supports the terms of this Settlement and a final order of this Commission finding that South Bend's existing basic rates and charges should remain unchanged. In support of such Settlement, the Parties acknowledge that the terms and conditions set forth below are reasonable, are the result of negotiations relative to the position each has taken or would take in further proceedings in this Cause, and should be accepted without modification in a final order of the Commission in this Cause. In the interest of efficiency, saving the limited resources of the Commission, and recognizing the reasonableness of the overall results produced by this Settlement, the Parties herein stipulate and agree as follows:

1. South Bend's existing basic rates and charges shall remain unchanged.

2. Two months prior to South Bend filing its next base rate case, South Bend will submit to the OUCC statements of the cash balances at that time.

3. The obligation from South Bend's last rate case (Cause Nos. 42779 and 42779-S1) to file a cost of service study with South Bend's next rate case survives this case and will apply to South Bend's next base rate case.

4. The Parties believe that South Bend's direct testimony and exhibits, along with its workpapers and this Settlement, constitute substantial evidence sufficient to support this Settlement and provide an adequate evidentiary basis upon which the Commission may make findings of fact and conclusions of law necessary to issue a final order adopting and approving the Settlement.

5. The parties further acknowledge and agree as follows:

   a. This Settlement is conditioned upon and subject to its acceptance and approval by the Commission in its entirety without change or condition that is unacceptable to any party. Each term of the Settlement is in consideration and support of each and every other term.

   b. This Settlement is a result of compromise by the Parties within the settlement process. Neither the making of this Settlement, nor any of the individual provisions or stipulations within the Settlement, shall constitute an admission or waiver by any party in any other proceeding; nor shall they constitute an admission or waiver in this proceeding if this Settlement is not accepted by the Commission. The Settlement, or any of the individual terms thereof, shall not be

used as precedent in any proceeding or for any other purpose except to the extent necessary to implement or enforce its terms.

c. The communications and discussions among the Parties, along with the materials produced and exchanged during the negotiation of this Settlement relate to offers of settlement and compromise, and as such are all privileged and confidential. Such material cannot be used in this, or any other proceeding without the agreement of the Parties herein.

d. The undersigned represent and agree that they are fully authorized to execute this Settlement on behalf of their designated clients who will thereafter be bound by this Settlement.

e. The Parties hereto will either support, or not oppose, seek rehearing, reconsideration and/or appeal the Commission's order accepting and approving this Settlement in accordance with its terms.

Accepted and agreed this 30th day of June, 2011.

CITY OF SOUTH BEND, INDIANA

By: _____

Its: Attorney

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR

By: _____

Terry Tolliver
Deputy Consumer Counselor