

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF CWA AUTHORITY, INC. FOR)
APPROVAL OF THE DETAILS OF AN)
ENVIRONMENTAL COMPLIANCE PLAN)
RECOVERY MECHANISM ALONG WITH)
SPECIFIC PROCEDURES TO GOVERN)
COMMISSION PROCEEDINGS RELATED TO)
IMPLEMENTATION OF SUCH MECHANISM)

CAUSE NO. 44053

APPROVED: JUN 14 2012

ORDER OF THE COMMISSION

Presiding Officers:
David E. Ziegner, Commissioner
Jeffery A. Earl, Administrative Law Judge

On July 29, 2011, CWA Authority, Inc. (the "Authority" or "Petitioner") filed a Verified Petition with the Indiana Utility Regulatory Commission ("Commission"), requesting approval of the details of an Environmental Compliance Plan Recovery Mechanism ("ECPRM"). On August 18, 2011, the Commission conducted an Attorney Conference, at which the parties discussed and agreed upon a procedural schedule for this Cause. On August 17, 2011, the CWA Authority Industrial Group (the "Industrial Group") filed a Petition to Intervene in this Cause, which was granted by Docket Entry dated August 25, 2011. The Commission conducted two Technical Conferences on October 13 and 25, 2011. Representatives of the Authority, the Indiana Office of the Utility Consumer Counselor ("OUCC"), the Industrial Group, and the Commission's Staff attended and participated in the Technical Conferences.

On January 25, 2012, the Parties filed a "Stipulation and Settlement Agreement" (the "Settlement Agreement") with the Commission. A copy of the Settlement Agreement is attached to this Order. On February 7, 2012, the Authority filed the testimony and exhibits of LaTona S. Prentice and Korlon L. Kilpatrick, and the OUCC filed the testimony of Edward D. Kaufman, all supporting the Settlement Agreement.

Pursuant to notice published as required by law, the Commission conducted an Evidentiary Hearing at 9:30 a.m. on March 20, 2012, in Hearing Room 222, 101 West Washington Street, Indianapolis, Indiana. Petitioner, the OUCC, and the Industrial Group participated in the hearing. No members of the general public appeared.

Having considered the evidence presented and the applicable law and being duly advised, the Commission finds:

- 1. Petitioner's Characteristics. The Authority is an Indiana nonprofit corporation created pursuant to an Interlocal Cooperation Agreement created under Ind. Code

ch. 36-1-7, among: the City of Indianapolis (the “City”); the Sanitary District of the City, acting by and through the Board of Public Works (the “Sanitary District”); and the Department of Public Utilities of the City, acting by and through the Board of Directors for Utilities of the Department of Public Utilities (the “Board”). The Authority’s principal office is located at 2020 North Meridian Street, Indianapolis, Indiana. The Authority furnishes wastewater utility service to residential, commercial, industrial, and other types of customers in and around Marion County, Indiana.

2. **Notice and Jurisdiction.** Due, legal, and timely notice of the public hearing in this Cause was given and published as required by law. Ind. Code 8-1-11.1-3(c)(9) requires the Authority to submit its proposed rules and rates for service for Commission approval. The Commission may approve the rules and rates for service only after notice of hearing and hearing as required by Ind. Code chs. 8-1-1 and 8-1-2. In addition, the Commission must determine whether the rates of service comply with Ind. Code §§ 8-1.5-3-8 and 8-1.5-3-10 and whether the rules of service comply with Ind. Code chs. 8-1-1 and 8-1-2. Therefore, the Commission has jurisdiction over Petitioner and the subject matter of this proceeding.

3. **Relief Requested.** The Authority seeks approval of an ECPRM, which will permit the Authority to adjust wastewater rates in order to have funds available to pay for its Environmental Compliance Plan (“ECP”) expenditures. The proposed ECPRM suggests specific procedures to govern Commission proceedings relating to its implementation.

4. **Background of Proceeding.** On July 13, 2011, the Commission issued an Order in Cause No. 43936 authorizing the acquisition by the Authority of certain wastewater system assets previously owned by the City and its Sanitary District and approving, with minor modifications, the terms of a settlement agreement entered into among the Board, the Authority, the City, the Department of Waterworks of the City, the Sanitary District, the Indianapolis Water Service Advisory Board, the OUCC, and the Indianapolis Water/Sewer Industrial Group. Among other terms, the settlement agreement provided:

The Settling Parties recommend the Commission authorize the Authority to implement an adjustment mechanism for wastewater rates and charges as proposed by the Authority to allow recovery of costs incurred to comply with the Authority’s Environmental Compliance Plan (“ECP”) outside of a general rate case; provided, however, only debt service payments for debt issued to fund capital expenditures incurred under the approved ECP and the costs of issuances and debt service reserve requirements associated with such debt issuances shall be recoverable through the ECP adjustment mechanism. The Settling Parties agree the mechanism shall not include a reconciliation component.

After Closing, the Authority will commence discussions with the OUCC and Commission regarding the specific procedures that will govern Commission proceedings relating to the proposed ECP adjustment mechanism.

More specifically, within sixty (60) days of a final Order in this Cause, the Authority will participate in a series of technical conferences with the Commission, the OUCC and any other Settling Parties to establish such procedures.

Bd. of Dirs. for Utils. of the Dep't of Pub. Utils. of the City of Indianapolis, Cause No. 43936, 2011 Ind. PUC LEXIS 198, at *159-160 (IURC July 13, 2011).

We approved the Authority's proposed ECP. *Id.*, at *80-81. However, with respect to the ECPRM, we concluded: "While ... it is appropriate for the Authority to recover debt service payments, including the costs of issuances and debt service reserve, for debt issued to fund capital expenditures incurred under the approved ECP through an ECPRM, the Commission has insufficient evidence to approve a mechanism at this time." *Id.*, at *84. We explained, "the details of the plan have not been fully developed, and it is not clear to the Commission that it is reasonable or in the public interest to exclude a reconciliation process from the recovery mechanism." *Id.*, at *85. The Commission directed the Authority to present a complete proposal for the ECPRM in a separately-filed proceeding. *Id.* In accordance with the Commission's Order in Cause No. 43936, the Authority filed the Petition initiating this Cause.

5. Settlement Agreement. The Parties entered into a Settlement Agreement on January 25, 2012. The Parties agreed the Authority should be authorized to implement an ECPRM Rate Adjustment Factor to take effect no earlier than January 1, 2014, and that the ECPRM should include a reconciliation process. The Parties agreed upon specific procedures that would govern two distinct types of proceedings relating to the ECPRM: Adjustment Proceedings and Reset/Reconciliation Proceedings.

A. Adjustment Proceedings. The Settlement Agreement defines "Adjustment Proceedings" as:

a Commission proceeding initiated by the Authority to modify the ECPRM Rate Adjustment Factor in order recover debt service payments for bonds the Authority has issued or will issue to fund capital expenditures under the ECP and to recover interest costs associated with short term debt issued to fund expenditures for ECP projects in anticipation of issuing bonds.

Settlement Agreement, ¶ 1(b)

Once per calendar year, the Authority may file a Petition initiating an Adjustment Proceeding. The Petition filed by the Authority will constitute its case-in-chief. The Authority's Petition will include evidence supporting the calculation of the ECPRM Rate Adjustment Factor. It will also include information designed to assist the Commission and other interested stakeholders in understanding the ECP projects to be completed with the funds from the anticipated bond issuance and previously issued short term debt.

After the Authority files its Petition, the OUCC and any intervenors will have forty-five days to file a report and/or testimony in opposition to or in support of the relief requested, and the Authority may file rebuttal testimony seven days thereafter. The Parties will request that the Commission hold an evidentiary hearing approximately twenty-one days after the OUCC is scheduled to file its report. A description of the precise manner in which the ECPRM Rate Adjustment Factor will be calculated in Adjustment Proceedings is attached to the Settlement Agreement.

After an Order has been issued in an Adjustment Proceeding and within fifteen days of the issuance of debt, the Authority shall file a true-up report that states the actual debt service cost compared to the cost estimated in the Adjustment Proceeding. Under certain limited circumstances, the Settlement Agreement allows the Authority to file a subsequent Adjustment Proceeding within a single calendar year.

B. Reset/Reconciliation Proceedings. The Settlement Agreement defines Reset/Reconciliation Proceedings as: “a Commission proceeding initiated annually by the Authority to reconcile revenues produced from the ECPRM Rate Adjustment Factors previously approved by the Commission in Adjustment Proceedings to the actual debt service for the same period.” *Id.*, ¶ 1(c) The Authority will initiate Reset/Reconciliation Proceedings on or before September 15th of each calendar year, beginning on September 15, 2014. The modification to the ECPRM Rate Adjustment Factor approved in a Reset/Reconciliation Proceeding will be made effective on January 1st of the following year.

In Reset/Reconciliation Proceedings, the Authority will file a report that reconciles the actual ECP-related debt service costs and volumes billed with the estimated ECP-related debt service cost and volumes billed. The Authority will also file supporting workpapers and a proposed order. The OUCC or any intervenors may submit comments to the Commission within thirty days after the Authority files its report. The Settlement Agreement provides that the Commission may conduct an evidentiary hearing at its discretion. A description of the precise manner in which the ECPRM Rate Adjustment Factor will be calculated in Reset/Reconciliation Proceedings is attached to the Settlement Agreement.

C. Other Provisions. The Settlement Agreement provides lengthier review periods in the Authority’s initial Adjustment and Reset/Reconciliation Proceedings. The Parties have agreed to meet informally within thirty days after the Authority files its initial Reset/Reconciliation Proceeding to discuss the relief requested and attempt to resolve issues raised in the proceeding. The Authority has agreed to initiate and participate in a series of technical conferences with the other Parties and Commission Staff on or before June 30, 2017, to discuss whether the procedures and methodologies set forth in this Settlement Agreement should be modified or amended.

The Settlement Agreement provides that the failure of any Party to raise issues in an Adjustment Proceeding or in a Reset/Reconciliation Proceeding regarding ECP Projects underlying the debt to be issued by the Authority does not waive the Party’s right to raise such issues in a subsequent base rate case. In addition, in any base rate case the Parties may

propose alternative allocation and rate design methodologies for the allocation and collection of the costs to be recovered through the ECPRM.

6. Evidence in Support of Settlement Agreement.

A. Petitioner's Evidence. LaTona S. Prentice, Vice President, Regulatory Affairs, of Citizens Energy Group stated that in Adjustment Proceedings, the ECPRM Rate Adjustment Factor will be designed to recover debt service payments for bonds, including the costs of issuance and debt service reserve, the Authority has or will issue to fund ECP-related capital expenditures, as well as, interest costs associated with short-term debt issued to fund expenditures for ECP projects in anticipation of issuing bonds. Ms. Prentice indicated it is important that the ECPRM be designed to recover interest costs associated with short-term debt issuances because the Authority plans to fund some Consent Decree projects with short-term debt leading up to the issuance of bonds, rather than issuing bonds in a large principal amount for projects to be completed in the upcoming six to twelve months.

Ms. Prentice anticipates the Authority will likely file its first Adjustment Proceeding in late 2013, and the first ECPRM Rate Adjustment Factor will become effective in early 2014. Ms. Prentice stated that the Authority may ordinarily initiate an Adjustment Proceeding only once per calendar year, but it may do so up to twice per calendar year depending on the circumstances. Ms. Prentice stated that the Authority might initiate two adjustment proceedings during a calendar year under two possible circumstances: (1) when the Authority's management determines at the outset of a particular calendar year that it would be advantageous and beneficial to ratepayers for the Authority to issue two, separate, smaller series of bonds – rather than a single larger issuance; or (2) when the Authority determines later in the calendar year that it is prudent to issue a second series of ECP-related debt in order to take advantage of favorable market conditions. With respect to the second circumstance, Ms. Prentice explained that the Authority may decide to issue a second series of debt in a particular calendar year if it believes that interest rates are likely to rise in the upcoming months, which could be detrimental to ratepayers.

Ms. Prentice testified the Authority will file a Reset/Reconciliation Proceeding on or before September 15th of each calendar year. The reconciled ECPRM Rate Adjustment Factor would take effect on January 1st of the following year. In Ms. Prentice's opinion it is reasonable and in the public interest to include a reconciliation process in the ECPRM. Ms. Prentice stated that reconciliation is intended to protect both the customers and the Authority from the differences between estimated and actual ECP-related debt service costs, as well as estimated and actual sewage disposal service use. Given the magnitude of the capital expenses and debt involved with the ECPRM, Ms. Prentice believes it is particularly prudent to reconcile the estimated ECP-related debt service costs and discharge to the actual cost and discharge.

Ms. Prentice noted the Parties agreed to different procedural schedules for Adjustment Proceedings and Reset/Reconciliation Proceedings. Ms. Prentice anticipated that Reset/Reconciliation Proceedings will involve fewer issues and can be completed over a

shorter time period. In Ms. Prentice's opinion, the agreed upon processes for the Adjustment and Reset/Reconciliation Proceedings provide adequate time for the Commission and parties to consider the Authority's proposed modifications to the ECPRM rate adjustment factor. Ms. Prentice noted that the agreed-upon procedural schedules were established following extensive discussions among all parties likely to be involved in the ECPRM process, including representatives of the OUCC, the Industrial Group, and the Commission's Staff who participated in the Technical Conferences.

Ms. Prentice described the evidence the Authority will provide in Adjustment Proceedings. To assist interested stakeholders in understanding the ECP projects to be completed with proceeds from the anticipated bond issuance and previously issued short term debt, the Authority will provide with its Petition: (1) a copy of the Six-Month Status Reports to the United States Environmental Protection Agency ("EPA") and the Indiana Department of Environmental Management ("IDEM") that the Authority has submitted since the filing of the prior Adjustment Proceeding; and (2) a version of Table 7-5 of the Long-Term Control Plan showing the amount that has been spent to date on each combined sewer overflow Control Measure, as well as, the total estimated cost of each Control Measure that has not already been completed.

Ms. Prentice noted that there will be instances where the Authority will issue one series of bonds that will fund both ECP and non-ECP projects. Ms. Prentice stated that if the Authority had to issue separate bonds for ECP and non-ECP related projects, it would bear significantly greater issuance costs, which would be passed on to customers. When the Authority issues one series of bonds to fund both ECP and non-ECP projects, only debt service costs associated with ECP projects and the pro rata share of the costs of issuance and funding the required debt service reserve will be included in the ECPRM Rate Adjustment Factor.

In Ms. Prentice's opinion, the terms of the Settlement Agreement represent a reasonable resolution of the issues regarding the ECPRM. Ms. Prentice believes the Settlement Agreement sets forth a process that gives all interested stakeholders an opportunity to adequately review adjustments to the ECPRM Rate Adjustment Factor but still ensures that revisions can be put in place promptly to ensure timely completion of the projects mandated by the Consent Decree.

Korlon L. Kilpatrick II, Manager, Rates & Business Applications, of Citizens Energy Group described the manner in which the ECPRM Rate Adjustment Factor will be calculated in Adjustment Proceedings and reconciled in annual Reset/Reconciliation Proceedings. Mr. Kilpatrick also sponsored Petitioner's Exhibit KLK-1, which contains hypothetical examples of the calculation of the ECPRM Rate Adjustment Factor.

Mr. Kilpatrick explained that the ECPRM Rate Adjustment Factor is the result of a simple calculation derived by dividing the total ECP-related costs to be recovered by the projected discharge volume. The total ECP-related costs to be recovered comprise the estimated debt service costs, including the costs of issuance and debt service reserve, for an

ECP-related bond issuance and any interest costs associated with short-term debt issued to fund expenditures for ECP-related projects in anticipation of issuing the bonds.

Mr. Kilpatrick stated the Reset/Reconciliation Proceeding will be an annual filing that will allow the ECPRM Rate Adjustment Factor to be reset and reconciled effective January 1st each year. The purposes of this proceeding are to reset the annual debt service costs from their initial estimates at issuance and to reconcile revenues produced from the ECPRM Rate Adjustment Factors approved in Adjustment Proceedings to the actual debt service for the same period.

Mr. Kilpatrick also described the impact an intervening base rate case will have on the Authority's ECPRM Rate Adjustment Factor. Mr. Kilpatrick testified that the amount of ECP-related debt service to be recovered via base rates will be determined during a base rate case. Therefore, in order to calculate the new ECPRM Rate Adjustment Factor, the total ECP-related costs to be recovered would be reduced by the amount of debt included in base rates.

B. OUCC's Evidence. Edward R. Kaufman, Senior Analyst for the OUCC, participated in the Technical Conferences that took place on October 13 and 25, 2011 and was actively involved in the settlement negotiations. Mr. Kaufman testified that the Parties reached a settlement that accommodates the needs of all parties. Mr. Kaufman explained that the Parties shared a common goal of managing the ECPRM process to keep costs as low as reasonably possible. He believes the Settlement Agreement reasonably balances Petitioner's desire for flexibility and timely cost recovery while maintaining the OUCC's desired oversight. Accordingly, Mr. Kaufman recommended that the Commission approve the Settlement Agreement.

7. 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.

Further, 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.

In Cause No. 43936, we determined it was appropriate for the Authority to recover debt service payments, including the costs of issuances and debt service reserve, for debt issued to fund capital expenditures incurred under the approved ECP through an ECPRM; however, we declined to pre-approve the ECPRM in the absence of specific details as to how it would operate. In this case, the Parties have presented a Settlement Agreement with specific details regarding the manner in which the ECPRM will operate. The parties also presented evidence supporting the reasonableness of the terms of the Settlement Agreement.

The Settlement Agreement includes Joint Settlement Exhibit 2, which precisely describes the manner in which the ECPRM will be calculated in both Adjustment Proceedings and Reset/Reconciliation Proceedings, subject to any revision to reflect alternative allocation and rate design methodologies that may be approved by the Commission in subsequent base rate cases. The ECPRM Rate Adjustment Factor methodology agreed upon in the Settlement Agreement includes a reconciliation process. The reconciliation will protect both the customers and the Authority and ensure that the Authority neither over- nor under-recovers ECP debt-related costs from its customers. In addition, the Authority has agreed to provide evidence in ECPRM Adjustment Proceedings that will keep all Parties and the Commission up-to-date on the status of ECP projects and the costs of each CSO Control Measure.

The Settlement Agreement also includes collaboratively developed procedural schedules for Adjustment Proceedings and Reset/Reconciliation Proceedings. The procedural schedules were agreed-upon following extensive discussions among all parties likely to be involved in the ECPRM process. Based on the testimony of Ms. Prentice and Mr. Kaufman, we find that the agreed-upon schedules strike an important balance between the Authority's need to have funds available to pay the costs of debt issued to fund ECP projects with the desire of interested stakeholders to review proposed ECPRM Rate Adjustment Factor modifications. Further, the Parties have committed to continue to work together to resolve any unforeseen issues with the ECPRM proceedings.

While we generally agree with the terms of the Settlement Agreement, we have one modification. Paragraph 4(c) states that the Commission may convene a hearing in a Reset/Reconciliation proceeding at its discretion. A Reset/Reconciliation Proceeding results in an adjustment of the ECPRM Rate Adjustment Factor. This, in turn, results in a change to customer bills. Because of this impact on rates, we find that a public evidentiary hearing is required for Reset/Reconciliation Proceedings as well as Adjustment Proceedings. Therefore, in all Reset/Reconciliation Proceedings, the Commission shall conduct an Evidentiary Hearing approximately forty-five to sixty days after the Petition is filed.

8. Conclusion. Based on the evidence of record and the foregoing discussion and findings, we conclude that the Settlement Agreement, as modified, is reasonable, supported by the evidence of record, and in the public interest. Accordingly, the Commission approves the ECPRM as set forth in the Settlement Agreement with the modification discussed above.

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, (IURC March 19, 1997).

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

1. The Settlement Agreement is approved as modified above. The terms and conditions of the Settlement Agreement are incorporated as part of this Order.
2. The Authority is authorized to implement its proposed ECPRM, as described in the Settlement Agreement and modified above and to adjust its wastewater rates and charges beginning no sooner than January 1, 2014, to provide timely recovery of ECP expenditures necessary for the Authority to comply in whole or in part with the Safe Drinking Water Act and/or Clean Water Act.
3. Subsequent ECPRM Causes shall be filed as follows: Adjustment Proceedings shall be filed under this cause number as 44053 ECPA # (with the # beginning at 1 and increasing numerically with each subsequent filing); Reconciliation/Reset Proceedings shall be filed under this cause number as 44053 ECPR # (with the # beginning at 1 and increasing numerically with each subsequent filing).
3. This Order shall be effective on and after the date of its approval.

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

APPROVED: JUN 14 2012

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



Shala M. Coe
Acting Secretary to the Commission

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FILED

BEFORE THE

JAN 25 2012

INDIANA UTILITY REGULATORY COMMISSION INDIANA UTILITY
REGULATORY COMMISSION

PETITION OF CWA AUTHORITY, INC. FOR)
APPROVAL OF THE DETAILS OF AN)
ENVIRONMENTAL COMPLIANCE PLAN)
RECOVERY MECHANISM ALONG WITH) CAUSE NO. 44053
SPECIFIC PROCEDURES TO GOVERN)
COMMISSION PROCEEDINGS RELATED TO)
IMPLEMENTATION OF SUCH MECHANISM)

STIPULATION AND SETTLEMENT AGREEMENT

On July 13, 2011, the Commission issued an Order in Cause No. 43936 (the "Order") approving the acquisition by CWA Authority, Inc. (the "Authority") of certain wastewater system assets previously owned and operated by the City of Indianapolis and its Sanitary District. The Commission also approved the Authority's proposed Environmental Compliance Plan ("ECP") pursuant to Indiana Code § 8-1-28 *et seq.* Under the ECP, the Authority will construct certain combined sewer overflow Control Measures, which must be completed pursuant to a Consent Decree entered by the U.S. District Court for the Southern District of Indiana, on December 19, 2006, in *United States and State of Indiana v. City of Indianapolis*, Cause No. 1:06-CV-1456-DFH-VSS, as amended (the "Consent Decree"). The Commission further found in Cause No. 43936 that "it is appropriate for the Authority to recover debt service payments, including the costs of issuances and debt service reserve, for debt issued to fund capital expenditures incurred under the approved ECP through" an Environmental Compliance Plan Recovery Mechanism ("ECPRM").

To that end, the Commission directed the Authority to present a complete proposal for the ECPRM in a separately-filed proceeding. The Commission indicated the

issues to be addressed should include: (i) specific procedures that will govern Commission proceedings related to the proposed ECPRM; and (ii) whether it is reasonable and in the public interest to exclude a reconciliation process from the ECPRM.

In accordance with the Commission's directive in the Cause No. 43936 Order, the Authority filed a Petition initiating this Cause on July 29, 2011. The Petition seeks Commission approval of the details and procedures applicable to the ECPRM Rate Adjustment Factor, which, beginning in 2014, would permit the Authority to adjust its wastewater rates and charges in order to have funds available to pay debt service associated with borrowings to fund ECP expenditures.

On August 17, 2011, an ad hoc group known as the CWA Authority Industrial Group (the "Industrial Group") filed a Petition to Intervene, which the Presiding Officers granted by docket entry dated August 25, 2011. Also, on August 25, 2011, the Presiding Officers issued a docket entry setting forth a procedural schedule in this Cause, which included technical conferences held on October 13, 2011 and October 25, 2011. Representatives of the Authority, the Indiana Office of Utility Consumer Counselor ("OUCC"), the Industrial Group and the Commission's staff participated in the technical conferences.

Following the October 25, 2011 technical conference, representatives of the Authority, the Industrial Group and OUCC (collectively, the "Parties") continued discussions regarding the ECPRM. As a result of those discussions, the Parties agreed upon a methodology for calculating the ECPRM Rate Adjustment Factor, as well as procedures that would govern ECPRM proceedings. The Parties' agreement with respect

to these matters is set forth in this Stipulation and Settlement Agreement (“Settlement Agreement”).

I. Definitions

1. The following definitions apply throughout this Settlement Agreement:

a. “ECPRM Rate Adjustment Factor” means the monthly charge to be applied to customers’ bills to recover debt service costs incurred by the Authority for debt issued to fund capital expenditures under the ECP.

b. “Adjustment Proceeding[s]” means a Commission proceeding initiated by the Authority to modify the ECPRM Rate Adjustment Factor in order to recover debt service payments for bonds the Authority has issued or will issue to fund capital expenditures under the ECP and to recover interest costs associated with short term debt issued to fund expenditures for ECP projects in anticipation of issuing bonds.

c. “Reset/Reconciliation Proceedings” means a Commission proceeding initiated annually by the Authority to reconcile revenues produced from the ECPRM Rate Adjustment Factor previously approved by the Commission in Adjustment Proceedings to the actual debt service for the same period.

II. Separate Reconciliation and Adjustment Proceedings

2. The Parties agree that the Authority should be authorized to implement an ECPRM Rate Adjustment Factor to take effect no earlier than January 1, 2014. The Parties further agree that the ECPRM Rate Adjustment Factor should include a reconciliation process. Accordingly, the Parties have agreed upon specific procedures that would govern two distinct types of proceedings relating to the ECPRM Rate Adjustment Factor. Those proceedings are described in subparagraphs (a) and (b) below

and are referred to as “Adjustment Proceedings” and “Reset/Reconciliation Proceedings,” respectively.

a. *Adjustment Proceedings.* Once each calendar year, except as described in subsection (b) below, the Authority may file a Petition initiating an Adjustment Proceeding to seek Commission approval to modify its ECPRM Rate Adjustment Factor in order to recover debt service payments, including the costs of issuance and debt service reserve, for bonds the Authority has issued or will issue to fund capital expenditures to be incurred under the Commission-approved ECP. As further described in Section I of Joint Settlement Exhibit 2, revisions to the ECPRM Rate Adjustment Factor also may be designed to recover interest costs associated with short term debt issued to fund expenditures for ECP projects in anticipation of issuing bonds. It will be incumbent on the Authority to file its Petition initiating an Adjustment Proceeding sufficiently in advance of the date the ECPRM Rate Adjustment Factor needs to be implemented to recover costs associated with an anticipated bond issuance. The Authority’s first ECPRM Rate Adjustment Factor will take effect no earlier than January 1, 2014. The ECPRM Rate Adjustment Factor approved in any Adjustment Proceeding will not be placed into effect until the first day of the month following the issuance of the debt.

After the issuance of an order in an Adjustment Proceeding authorizing the recovery of debt service costs through the ECPRM Rate Adjustment Factor and within fifteen (15) business days of the issuance of debt, the Authority shall file a “true-up report” stating the actual debt service cost based on the amount

borrowed and the actual interest rate, as compared to the originally-estimated ECP-related debt service cost. The ECPRM Rate Adjustment Factor will be trued up in the Reset/Reconciliation Proceedings described below.

b. *Number of Adjustment Proceedings Each Calendar Year.* Prior to filing the Petition to initiate the first Adjustment Proceeding in a particular calendar year, the Authority will meet informally with the OUCC and Industrial Group no less than 30 days before filing with the Commission and describe its plan for the issuance of indebtedness in the upcoming calendar year to fund ECP projects, including the proposed number of ECP-related debt issuances. If the Authority proposes that there be two Adjustment Proceedings relating to two separate ECP-related debt issuances, the OUCC and Industrial Group will within fourteen (14) calendar days following the meeting advise the Authority of any objection to the filing of a second Adjustment Proceeding. If the parties do not mutually agree to the Authority's initiation of two separate Adjustment Proceedings for smaller debt issuances during the calendar year, the Authority will file a single Adjustment Proceeding during the calendar year relating to a larger issuance of ECP-related indebtedness. If the parties agree to the Authority's initiation of two separate Adjustment Proceedings, and to the extent the second ECP-related debt issuance differs from what was described in the meeting among the Parties preceding the first issuance, the Authority will meet informally with the OUCC and Industrial Group no less than fourteen (14) calendar days before filing the second Adjustment Proceeding.

Notwithstanding the foregoing, the Authority also may file a second

Adjustment Proceeding during a particular calendar year if the Authority determines that circumstances make the issuance of additional ECP-related indebtedness advantageous to the ratepayers. Such circumstances may include, but are not limited to, the possibility of avoiding a detriment to ratepayers, creating long-term savings for ratepayers, or favorable market conditions. Prior to initiating a second Adjustment Proceeding under such circumstances, the Authority will meet informally with the OUCC and Industrial Group to advise them of its intention to file the second Adjustment Proceeding. The OUCC and Industrial Group will within fourteen (14) calendar days following the meeting to advise the Authority of any objection to the filing of this second Adjustment Proceeding. To the extent that the OUCC and/or Industrial Group object to the filing of the second Adjustment Proceeding, the Parties may include the basis for such objection in their report and/or testimony filed with the Commission in the proceeding.

c. *Reset/Reconciliation Proceedings.* The Authority shall file a Petition initiating a Reset/Reconciliation Proceeding on or before September 15th of each calendar year beginning September 15, 2014, solely for the purpose of resetting the recovery of debt service costs to the subsequent calendar year and reconciling revenues produced from the ECPRM Rate Adjustment Factor previously approved by the Commission in Adjustment Proceedings to the actual debt service for the same period. As further described in Section II of Joint Settlement Exhibit 2, calculation of the reconciliation will take into account: (i) actual ECP-related debt service costs for the just-concluded calendar year as

compared to originally-estimated calendar year ECP-related debt service cost; and (ii) actual calendar year usage as compared to originally estimated usage. The modification to the ECPRM Rate Adjustment Factor approved in a Reset/Reconciliation Proceeding will be made effective on January 1st of the following year.

III. Procedures Governing ECPRM Adjustment Proceedings and Reset/Reconciliation Proceedings

Subject to changes made in accordance with the procedures set forth in paragraph 9 and/or adoption of different allocations or rate designs approved in a base rate case as provided for in paragraph 11 and, the following procedures will govern the Adjustment and Reset/Reconciliation Proceedings.

3. *Adjustment Proceedings.* The Parties agree that the following procedures will govern Adjustment Proceedings:

a. The Authority will file a Petition, which will include the supporting information and documentation described in paragraph IV. 7. The Authority will contemporaneously file two (2) copies of all workpapers and a proposed form of final order.

b. Within forty-five (45) days after the Authority files its Petition, the OUCC and/or any intervenors may file a report and/or testimony in opposition to or in support of the relief requested. However, in the Authority's initial request for approval of an ECPRM Rate Adjustment Factor, the OUCC and any intervenors may submit a report and/or testimony in opposition to or in support of the requested relief within sixty (60) days after the Authority files its Petition.

c. Within seven (7) days after the OUCC and intervenors file their

respective reports, the Authority may file rebuttal testimony.

d. Within a reasonable time after the Authority has filed its Petition, the Parties will request the Commission hold an evidentiary hearing to take place approximately twenty-one (21) days after the OUCC is scheduled to file its report. The Parties anticipate the Commission will endeavor to issue its final order within 30 days following the evidentiary hearing. If, subsequent to the filing of its Petition, the Authority files additional testimony to supplement or revise its Petition, this shall constitute a basis to revise the procedural schedule. However, the schedule shall not be revised unless requested by one of the Parties or ordered by the Commission sua sponte.

e. The Parties agree that the failure of any Party to raise issues in an Adjustment Proceeding or in a Reset/Reconciliation Proceeding regarding the ECP projects underlying the debt to be issued by the Authority shall not abrogate or waive that Party's right to raise such issues in a subsequent base rate case or appeal thereof. Notwithstanding the foregoing, the Parties acknowledge the necessity of completing the ECP projects in accordance with the terms of the Consent Decree and Long Term Control Plan.

4. ***Reset/Reconciliation Proceedings.*** The Parties agree that the following procedures will govern Reset/Reconciliation Proceedings:

a. The Authority will file a report that reconciles the actual ECP-related debt service costs and volumes billed as compared to originally estimated ECP-related debt service cost and volumes billed. The Authority will contemporaneously file with its report two (2) copies of any workpapers and a

proposed form of final order as well as the supporting information and documentation described in paragraph IV.8.

b. Within thirty (30) days after the Authority files its report, the OUCC and/or any intervenors may file their comments with the Commission. However, in the initial Reset/Reconciliation Proceeding, the OUCC and any intervenors may file their comments within forty-five (45) days after the Authority files its Report.

c. Upon review of the Authority's report and the OUCC's and any intervenor's comments, the Commission will issue an Order authorizing any adjustment to the ECPRM Rate Adjustment Factor to reconcile any over-recovery or under-recovery of the underlying ECP-related debt service costs. The Commission may, at its discretion, convene a hearing after notice prior to authorizing any adjustment to the ECPRM Rate Adjustment Factor.

5. Discovery in Adjustment Proceedings and Reset/Reconciliation Proceedings will be conducted on an informal basis with objections or responses to discovery requests due within five (5) business days. The Parties further agree that all discovery and filings will be served on the other Parties electronically.

6. As part of the Authority's initial Reset/Reconciliation Proceeding, the Parties will meet within thirty (30) days after the Authority files its Petition to discuss the relief requested and attempt to resolve issues raised in the proceeding.

IV. Evidence to be provided by the Authority with its Petitions and/or Reports in ECPRM Proceedings

7. *Adjustment Proceedings.* In Adjustment Proceedings, the Authority will provide the following evidence:

a. A quantification of the estimated ECP-related principal amount of the bond issuance and the estimated debt service on the bonds to be issued to fund the capital expenditures funded through the proposed ECPRM Rate Adjustment Factor, including the estimated cost of issuance and debt service reserve requirements. An estimated debt service schedule will be an exhibit to the Petition.

b. A computation and support for the proposed ECPRM Rate Adjustment Factor, using the data and methodology described in Joint Settlement Exhibit 2 or as otherwise may be ordered by the Commission.

c. A revised ECPRM tariff sheet.

d. A description of the impact of the revised ECPRM Rate Adjustment Factor on customers' bills by class.

e. The Authority also will provide:

i. The Six-Month Status Reports to the United States Environmental Protection Agency and the Indiana Department of Environmental Management that the Authority has submitted since the filing of the prior Adjustment Proceeding. The Reports will be filed as an exhibit to the Petition. Appendices to the Reports will be provided on a CD as workpapers.

ii. A version of Table 7-5 of the Long-Term Control Plan showing the amount that has been spent to date on each combined sewer overflow Control Measure. The table also will show the total estimated cost of each Control Measure that has not already been completed, in

current dollars. For purposes of this Settlement Agreement, current dollars will mean 2012 dollars. Current dollars may be updated from time-to-time, but not more often than once every five years.

f. A description of any amendments to Table 7-5 of the Long Term Control Plan or other provisions of the Consent Decree.

g. An affidavit from an officer of the Authority attesting to the veracity of the foregoing statements and information.

8. ***Reset/Reconciliation Proceedings.*** In Reset/Reconciliation Proceedings, the Authority will provide the following evidence:

a. A quantification of the actual ECP-related principal amount of the debt issuance and the actual ECP-related debt service on the debt funded through the ECPRM Rate Adjustment Factor, including the actual cost of issuance and debt service reserve requirements. Actual debt service schedules will be attached as exhibits to the Petition.

b. A computation and support for the proposed ECPRM Rate Adjustment Factor using the data and methodology described in Joint Settlement Exhibit 2, or as otherwise may be ordered by the Commission.

c. A revised ECPRM tariff sheet.

d. A description of the impact of the revised ECPRM Rate Adjustment Factor on customers' bills by class.

e. An affidavit from an officer of the Authority attesting to the veracity of the foregoing statements and information.

V. Future Evaluation of Agreed Upon Procedures and Methodologies

9. On or before June 30, 2017, the Authority will initiate and participate in a series of technical conferences with the other Parties and Commission staff to discuss whether the procedures and methodologies set forth in this Settlement Agreement should be modified or amended. To the extent the Parties agree to modify or amend the procedures and methodologies set forth herein, the Parties will jointly petition or initiate a 30-day filing requesting that the Commission approve those proposed changes. If there is disagreement among the Parties as to modifications or amendments to be made to the procedures and methodologies set forth in this Settlement Agreement, the Authority will petition the Commission for a formal proceeding and hearing to consider the Parties' respective positions. Notwithstanding the foregoing, until and unless modified by a final Order of the Commission or through the 30-day filing process, the procedures and methodologies set forth in this Settlement Agreement will continue to be adhered to by the Parties. In addition to the foregoing process for modifying the procedures and methodologies set forth in this Settlement Agreement, the Parties also may assert or propose in any base rate case and any appeal thereof, alternative allocation and rate design methodologies for the allocation and collection of the costs to be recovered through the ECPRM Rate Adjustment Factor.

VI. Settlement Agreement -- Scope and Approval

10. Neither the making of this Settlement Agreement nor any of its provisions shall constitute in any respect an admission by any Party in this or any other litigation or proceeding. Neither the making of this Settlement Agreement, nor the provisions thereof, nor the entry by the Commission of a Final Order approving this Settlement Agreement,

shall constitute or be construed as an estoppel or waiver nor establish any principles or legal precedent applicable to Commission proceedings other than with respect to the procedures to be used in the Adjustment Proceedings and Reset/Reconciliation Proceedings described herein.

11. All Parties reserve the right to assert or propose, in a base rate case and any appeal thereof, alternative allocation and rate design methodologies for the allocation and collection of costs to be recovered through the ECPRM Rate Adjustment Factor. The Parties agree that no provision of this Settlement Agreement, including Joint Exhibit 2, shall be construed, or is intended, to preclude any Party from proposing or advocating a different allocation methodology or rate design in any base rate case or appeal thereof.

12. This 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 tribunal of competent jurisdiction. This Settlement Agreement is solely the result of compromise in the settlement process and, except as provided herein, is without prejudice to and shall not constitute or be construed as an estoppel or waiver of any position that any of the Parties may take with respect to any or all of the issues resolved herein in any future regulatory or other proceedings.

13. The undersigned have represented and agreed that they are fully authorized to execute this Settlement Agreement on behalf of their designated clients, and their successors and assigns, who will be bound thereby, subject to the agreement of the Parties on the provisions contained herein and in the attached exhibits.

14. The communications and discussions during the negotiations and conferences attended only by any or all of the Parties, their attorneys, and their consultants have been conducted based on the explicit understanding that said communications and discussions are or relate to offers of settlement and therefore are privileged. All prior drafts of this Settlement Agreement and any settlement proposals and counterproposals also are or relate to offers of settlement and are privileged.

15. This Settlement Agreement is conditioned upon and subject to Commission acceptance and approval of its terms in their entirety, without any change or condition that is unacceptable to any Party.

16. The Parties will request Commission acceptance and approval of this Settlement Agreement in its entirety, without any change or condition that is unacceptable to any party to this Settlement Agreement.

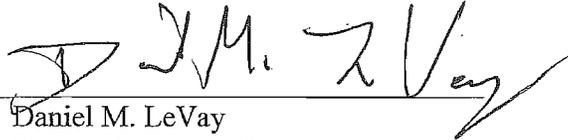
17. The Parties will work together to finalize and file an agreed upon proposed Order with the Commission. The Authority shall offer, and the other Parties may offer, supporting testimony for the approval of this Settlement Agreement in this proceeding and will request that the Commission issue a Final Order promptly accepting and approving the same in accordance with its terms.

18. The Parties shall not appeal or seek rehearing, reconsideration or a stay of any Final Order entered by the Commission approving the Settlement Agreement in its entirety without changes or condition(s) unacceptable to any Party. Any of the Parties may, and the Authority shall, support such a Final Order in the event of an appeal or a request for rehearing, reconsideration or a stay by any person.

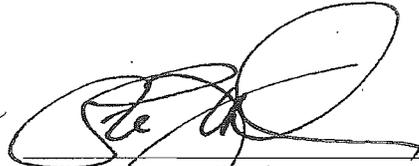
Accepted and Agreed on this 25th day of January, 2012.

INDIANA OFFICE OF UTILITY CONSUMER
COUNSELOR

CWA AUTHORITY, INC.

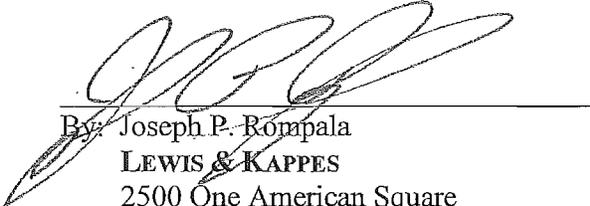


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Agreed-Upon Initial Calculation of the ECPRM Rate Adjustment Factor

Except as may otherwise be ordered by the Indiana Utility Regulatory Commission following a base rate case as provided for in paragraph 11 or following the further evaluation of the procedures and methodologies described in paragraph 9, the ECPRM Rate Adjustment Factor shall be calculated as described below. Consistent with the Parties understanding as expressed in paragraph 11 of the Settlement Agreement, nothing in Joint Exhibit 2 shall be construed as a waiver by any Party of its rights to advocate or propose alternative allocation methodologies or rate designs in any base rate case or appeal thereof.

I. *Adjustment Proceedings*

In any Adjustment Proceeding that occurs within a calendar year, the modification to the ECPRM Rate Adjustment Factor will be calculated as follows:

a. The estimated annual ECP-related debt service for the proposed bond issuance, as well as any interest costs associated with short-term debt issued to fund expenditures for ECP-related projects in anticipation of issuing the proposed bonds will be the basis for the adjustment to the ECPRM Rate Adjustment Factor.

b. The projected volume to which the ECPRM Rate Adjustment Factor will be billed will be determined for the twelve months following the effective date of the ECPRM Rate Adjustment Factor.

c. The adjustment to the ECPRM Rate Adjustment Factor will be derived by dividing the total incremental amount to be recovered as determined in subparagraph (a) by the projected volume to be billed as determined in subparagraph (b).

d. This new adjustment factor will be added to the ECPRM Rate Adjustment Factor effective at the time to derive the new ECPRM Rate Adjustment Factor.

II. *Reset/Reconciliation Proceedings*

The ECPRM Rate Adjustment Factor resulting from the annual Reset/Reconciliation Proceeding will be effective January 1st each year, and the reconciliation period will be the most recently concluded calendar year prior to the filing date. In the Reset/Reconciliation Proceeding in any calendar year, the ECPRM Rate Adjustment Factor will be calculated as follows:

a. The ECP-related debt service to be recovered in the prospective calendar year will be determined based on the calendar-year, ECP-related debt service for existing bond issuances that previously were included in the ECPRM Rate Adjustment Factor offset by interest income earned on unspent ECP-related debt service proceeds.

b. Any variance from the reconciliation process set forth below would be added to the calendar year, ECP-related debt service determined in subparagraph (a) to determine the total amount to be recovered in the ECPRM Rate Adjustment Factor (in the Authority's first Reset/Reconciliation Proceeding, this amount will be zero). In years where reconciliation would occur, the variance will be calculated as follows:

1. The actual ECP-related debt service paid during the reconciliation period for all bond issuances, including the associated interest on short-term debt, will be determined.

2. The actual amount recovered during the reconciliation period will be determined based on the actual monthly volume billed and the ECPRM Rate

Adjustment Factor(s) in effect during each month of the reconciliation period.

3. The difference between the actual ECP-related debt service paid during the reconciliation period determined in subparagraph (1) and the actual ECP-related amount recovered determined in subparagraph (2) will become the variance amount to be included in the Reset/Reconciliation Proceeding.

c. If a Final Order is received in a base rate case proceeding prior to the filing of the Reset/Reconciliation Proceeding, the sum derived under subparagraphs (a) and (b) above would be offset by the amount of ECP-related debt service recovered via base rates.

1. The amount of ECP-related debt service to be recovered via base rates during the prospective calendar year in subparagraph (a) will be based on the dollar amount determined during the base rate case for prospective given calendar year.

2. The amount of ECP-related debt service recovered via base rates during the reconciliation period in subparagraph (b) will be imputed by an adjustment factor determined during the base rate case and the actual volume billed for the months the new base rates were in effect during the reconciliation period.

d. Using a projected volume billed for the prospective calendar year, the ECPRM Rate Adjustment Factor would be derived by dividing the total ECP-related amount to be recovered, the result of subparagraphs (a) through (c), by the projected volume to be billed.