



STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF THE CITY OF MARTINSVILLE)
 FOR AUTHORITY TO INCREASE ITS RATES) CAUSE NO. 44153
 AND CHARGES FOR WATER UTILITY)
 SERVICE AND FOR APPROVAL OF A NEW)
 SCHEDULE OF RATES AND CHARGES) APPROVED
 APPLICABLE THERETO) DEC 12 2012

ORDER OF THE COMMISSION

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

On January 26, 2012, the City of Martinsville, Indiana (“Martinsville”) filed its Petition with the Indiana Utility Regulatory Commission (“Commission”), seeking authority to increase its rates and charges for water utility service and approval of new schedules of rates and charges. On April 10, 2012, Martinsville filed the direct testimony and exhibits of John M. Seever, CPA. On April 11, 2012, Martinsville filed corrected schedules.

On July 30, 2012, after engaging in settlement negotiations with Martinsville, the Indiana Office of Utility Consumer Counselor (“OUCC”) filed its Notice of Intent Not to File Testimony. On August 10, 2012, Martinsville and the OUCC filed a Stipulation and Settlement Agreement (“Settlement Agreement”) and testimony supporting the settlement.

Pursuant to notice given and published as required by law, proof of which was incorporated into the record, the Commission conducted an Evidentiary Hearing at 9:30 a.m. on September 11, 2012, in Hearing Room 222, 101 West Washington Street, Indianapolis, Indiana. Martinsville and the OUCC appeared and participated in the hearing. No members of the general public appeared or attempted to participate in this Cause.

Based on the applicable law and the evidence, the Commission finds:

1. Notice and Jurisdiction. Due, legal, and timely notice of the public hearing in this Cause was given as required by law. Martinsville owns and operates a “municipally owned utility” as that term is defined in Ind. Code § 8-1-2-1(h). Under Ind. Code §§ 8-1-2-42 and 8-1.5-3-8, the Commission has jurisdiction over Martinsville’s schedules and rates and charges. Therefore, the Commission has jurisdiction over Martinsville and the subject matter of this proceeding.

2. Martinsville’s Characteristics. Martinsville is a municipality that owns, operates, manages, and controls 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 Martinsville, Indiana. The Commission approved Martinsville's existing rates and charges in Cause No. 42676.

3. **Test Year.** The test year for determining Martinsville's annual revenue requirements in this Cause is the twelve months ended December 31, 2011, with adjustments for changes that are fixed, known, and measurable and that will occur within twelve months of the close of the test year. Based on the evidence in the record, we find that the proposed test year is sufficiently representative of Martinsville's ongoing operations for ratemaking purposes.

4. **Martinsville's Case-In-Chief.** John M. Seever, CPA and partner in the firm Umbaugh, Certified Public Accountants, testified on behalf of Martinsville. Mr. Seever presented an accounting report dated April 10, 2012, summarizing the results of Umbaugh's study of Martinsville's water rates and charges.

Mr. Seever explained the adjustments that he made to test-year operating expenses to arrive at pro forma operating expenses. Adjustments were made to reflect current price levels for salaries and wages, health insurance, Federal Insurance Contributions Act ("FICA") and Medicare, Public Employees' Retirement Fund ("PERF"), union pensions, replacement of the granular activated carbon charcoal ("GAC") filter, water tank painting, well maintenance, utility rate case expense, insurance, city garage lease payments, and utility receipts tax. In addition, adjustments were made to eliminate capital and non-recurring items.

Mr. Seever explained that the accounting report included an annual allowance for replacements and improvements equal to the annual depreciation expense, which was calculated with a two percent composite depreciation rate on the utility plant in service as of December 31, 2011, less land, plus capitalized items. The annualized depreciation allowance for replacements and improvements was \$308,355.

Mr. Seever described the pro forma revenue requirements, the annual operating revenues, and the required increase in operating revenues. The revenue requirements included the repayment of temporary loans from Martinsville's sewage works and Economic Development Income Tax ("EDIT") funds. The temporary loans have been scheduled to be repaid over a five-year period, resulting in an annual requirement of \$123,900. The revenue requirements also include \$852,941 for the debt service requirement on outstanding waterworks revenue bonds. No revenue requirement was included to fund the debt service reserve account, because the debt service reserve account should be fully funded for the outstanding bonds by December 2012. An allowance of \$93,912 was calculated for payment in lieu of taxes.

The resulting net revenue requirements, after deducting system development charges, insurance reimbursements, other non-recurring items, penalties, tap fees, and interest income based on calendar year 2011 amounts, equaled \$2,649,592. Mr. Seever calculated a shortfall based on test-year operating revenues in the amount of \$865,552. This resulted in a recommended 49 percent across-the-board increase in present rates and charges. Mr. Seever explained that the Morgan-Monroe Forestry Area surcharge has been eliminated from test year revenues due to a proposed annexation by Martinsville that would put approximately 70% of the surcharged customers within the new City limits.

5. **The Settlement Agreement.** The Settlement Agreement entered into by Martinsville and the OUCC is attached and incorporated into this Order by reference. The Settlement Agreement proposes a 40 percent across-the-board increase in Martinsville's current rates and charges so as to produce an additional \$726,589 in annual operating revenues. The Parties agreed to an annual allowance of \$424,800 for extensions and replacements ("E&R"), based on Martinsville's capital improvement plan, which is described in Mr. Holloway's testimony. The Parties' also agreed on the level of pro forma operating expenses, including salaries and wages (and related expenses), rate case expense, tank painting amortization, and certain additional items the OUCC considers to be capital or nonrecurring. The Settlement Agreement also proposes certain actions and reporting obligations to be undertaken by Martinsville, including: (1) annual reports of Martinsville's E&R expenditures; (2) a true-up of the water utility's share of the lease payments for the new city garage; (3) implementation of Martinsville's water treatment modification plan; (4) annual reports on tetrachloroethylene (PCE) contamination levels; (5) creation of a cross-connection control program; (6) annual reports on periodic maintenance; and (7) development of a water conservation plan.

The Settlement Agreement states that the Parties stipulate and agree that the rate increase proposed in the Settlement Agreement is just and reasonable and that the terms and conditions of the Settlement Agreement are supported by the evidence and represent a fair, reasonable, and just resolution of all the issues in this Cause.

A. **Martinsville's Supporting Evidence.** Mr. Seever testified in support of the Settlement Agreement and presented a proposed tariff reflecting the new rates calculated in accordance with the agreed revenue requirements. Mr. Seever testified that the Parties entered into good faith discussions regarding the issues in the case and independently concluded that the terms of the Settlement Agreement will allow Martinsville to continue to provide safe and reliable water service and address concerns raised by the OUCC.

Mr. Seever said that the OUCC expressed concern over including the repayment of the temporary loans from Martinsville's sewage works and EDIT funds in the revenue requirements. The Parties agreed to remove the repayment of the temporary loans from the revenue requirements. Martinsville also changed its request for depreciation expense as a revenue requirement to a request for E&R expense. The parties agreed that the switch from depreciation to E&R expense will more accurately reflect Martinsville's financial needs. The change will add a revenue requirement of \$424,800.

Next, Mr. Seever described the agreed adjustments to Martinsville's pro forma operation and maintenance expenses. The Parties agreed that salaries and wages expense should include a portion of elected and appointed officials' annual salaries that had not been allocated to the water utility per the 2012 Salary Ordinance due to the financial condition of the utility. The Parties also agreed that the meter readers' and billing clerk's salaries and wages should be allocated 50% to the water utility and 50% to the sewage works, along with the applicable employee benefits for those employees. The Parties agreed to amortize the tank painting expense over fifteen years instead of the twelve years originally proposed by Martinsville. The Parties agreed to exclude \$22,203 that the OUCC considered to be capital or nonrecurring expenses. And the Parties agreed to cap rate case expense at the lesser of Martinsville's original \$80,000 estimate or

the actual expense incurred and to amortize rate case expense over five years rather than Martinsville's original proposal of four years.

Mr. Seever testified that the resulting net revenue requirement, after making corresponding reductions in pro forma Utility Receipts Tax, is \$2,542,929, which yields a required increase in annual operating revenues of \$726,589 or 40%.

Ross Holloway, Martinsville's City Engineer, also offered testimony in support of the Settlement Agreement. Mr. Holloway described the nine projects that are included in Martinsville's five-year capital improvement plan. Projects 1 through 3 will replace existing water mains in the older parts of the city. Maintenance on these mains has been a continuous problem, and as a result, replacement will reduce the overall cost of operation and improve pressure and fire flows in those areas of the system.

Project 4 will install a new loop connection between two sections of the system that were not fully connected. The project will provide improved flow and allow for better equalization of pressure.

Project 5 will replace an existing 6-inch main with a 12-inch main to provide an additional connection between the system and a 1.5 million gallon storage tank. This project will assist in improving flows and equalizing pressures and is an integral part of connecting a new south well field to the system.

Project 6 will replace and upgrade existing mains, which are insufficient for the pressure they carry and have experienced frequent breaks. The mains were installed in the 1970s and designed to meet the needs of the existing customer base with little room for growth. Since that time, the number of homes in the area has approximately doubled. This project will eliminate a serious maintenance expense, reduce the number of boil orders, and provide for future customer growth in the area.

Project 7 will extend water service to a residential development that currently is served by wells and septic systems. The area has recently begun experiencing issues with failing septic systems, and Martinsville has included this project for the health and safety of the community.

Project 8 will construct a new 16-inch water main in anticipation of the development of a new large capacity well field and treatment plant to supply the entire city. Project 9 will investigate a new well field to replace the existing well field, which is contaminated with PCE. The contamination levels are rising more quickly than expected and the cost to remove the PCE is expected to rise to \$100,000 per year.

B. OUCC's Supporting Evidence. Harold Riceman, Utility Analyst in the OUCC's Water/Wastewater Division, offered testimony supporting the Settlement Agreement on behalf of the OUCC. Mr. Riceman said that the Settlement Agreement provides bargained-for benefits that are important for each of the parties and will allow Martinsville an opportunity to earn revenues sufficient to meet its revenue requirements. Mr. Riceman described each of the agreed adjustments to Martinsville's original proposal, which are also discussed above. The agreed adjustments resulted in a decrease of \$138,962 or 8.51% to Martinsville's proposed revenue requirements, and a 40 percent increase in Martinsville's current rates and charges.

Jeffrey Fish, Utility Analyst in the OUCC's Water/Wastewater Division, also offered testimony in support of the Settlement Agreement. Mr. Fish provided background on Martinsville's operation of the water utility, PCE levels, GAC filters, tank maintenance, cross-connection program, and the capital improvement plan.

6. Commission Discussion. 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 of Ind., Inc. 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.

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 of Ind., Inc. v. Public Service Co. of Ind., Inc.*, 582 N.E.2d 330,331 (Ind. 1991)). And the Commission's own procedural rules require that settlements be supported by probative evidence. 170 IAC 1-1.1-17(d). Therefore, before we can approve the Settlement Agreement, we must determine whether the evidence in this Cause sufficiently supports the conclusions that the Settlement Agreement is reasonable, just, and consistent with the purpose of Indiana Code ch. 8-1-2 and that such agreement serves the public interest.

The evidence in this case demonstrates that the Settlement Agreement is the result of serious negotiations and will provide benefits to Martinsville's customers as well as allowing Martinsville the opportunity to earn sufficient revenues to meet its revenue requirements. The Settlement Agreement also provides for appropriate treatment of Martinsville's revenues and expenses in the calculation of its revenue requirements. Therefore, we find that the Settlement Agreement is reasonable, just, consistent with the purpose of Ind. Code ch. 8-1-2, and in the public interest.

In the Settlement Agreement, the Parties agreed to the following revenue requirements:

Operation & Maintenance Exp.	\$1,191,660
Additional utility receipts tax	10,172
Debt Service	852,941
E&R	424,800
Payment In Lieu of Taxes	<u>93,912</u>
Total	\$2,573,485
Less: Interest Income	(721)
Less: Other water revenue	(28,735)
Less: Tap fees	<u>(1,100)</u>
Net Revenue Requirements	<u>\$2,542,929</u>

The parties agreed that Martinsville's pro forma revenues at current rates equal \$1,816,340. Based on the evidence, the Commission finds that the rates and charges currently in effect for Martinsville are inadequate to provide for the annual revenue requirement and should be increased by 40% to produce additional operating revenues of \$726,589 per year. As a result of the increase, an average customer using 5,000 gallons of water per month should experience a monthly bill increase of \$8.46 from \$21.16/month to \$29.62/month. Finally, in accordance with the Parties' stipulation, we find that Martinsville's rate case amortization will be adjusted to the lesser of \$80,000 or actual costs upon conclusion of the rate case.

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).

7. **PCE Contamination.** In written testimony admitted in this Cause and oral testimony during the Evidentiary Hearing, Martinsville submitted evidence regarding PCE Contamination of its existing well field. PCE levels are rising more quickly than was expected, and the GAC filters used to remove contaminants are lasting half as long as predicted. As a result, Martinsville has requested an additional \$100,000 per year in revenue requirements for increased filter costs. Martinsville purchased land for a new well field site in 2005, but later discovered this land had a contamination issue as well. Martinsville is now pursuing a new well field location, which it hopes to utilize in five to ten years.

We are concerned with the rapidly rising PCE levels in the existing water supply and the associated increases in treatment and filtration costs. Although we find that the evidence in this case shows that Martinsville is taking appropriate steps to address the PCE contamination and to procure a new source of water, we encourage Martinsville to move as quickly as possible with its plans to develop a new well field that is free of contamination.

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

1. The terms of the Settlement Agreement are approved and adopted into this Order.
2. Martinsville is authorized to increase its rates and charges for water utility service by 40 percent across-the-board, which will increase annual operating revenues by \$726,589 and produce total annual operating revenues of \$2,542,929.
3. Martinsville shall file with the Water/Wastewater Division of the Commission new schedules of rates and charges for approval before placing into effect the rate increase authorized herein. Martinsville's new schedules of rates and charges shall be effective on filing after approval by the Water/Wastewater Division and shall cancel all previously approved schedules of rates and charges.
4. Martinsville shall comply with the actions and reporting requirements required by the Settlement Agreement and discussed in Paragraph 5 above.
5. In accordance with Ind. Code § 8-1-2-70, Martinsville shall pay the following itemized charges within twenty days from the date of the Order to the Secretary of the Commission:

Commission Charges	\$ 698.21
OUCG Charges	\$ 9,003.24
Legal Advertising Charges	\$ <u>180.88</u>
TOTAL	\$ 9,882.33

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

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

APPROVED: DEC 12 2012

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



Brenda A. Howe
Secretary to the Commission

FILED
August 10, 2012
INDIANA UTILITY
REGULATORY COMMISSION

STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION

PETITION OF THE CITY OF MARTINSVILLE)
FOR AUTHORITY TO INCREASE ITS RATES AND)
CHARGES FOR WATER UTILITY SERVICE) CAUSE NO. 44153
AND FOR APPROVAL OF A NEW SCHEDULE OF)
RATES AND CHARGES APPLICABLE THERETO)

STIPULATION AND SETTLEMENT AGREEMENT

Petitioner, City of Martinsville, Indiana (“Petitioner” or “City”) and the Office of Utility Consumer Counselor (the “OUCC”), being all of the parties to this proceeding (collectively referred to as the “Parties”), stipulate and agree for the purposes of resolving the issues in this Cause to the terms and conditions set forth below (which terms and conditions and the exhibits attached thereto are collectively referred to herein as the “Settlement”).

1. The Parties stipulate and agree to the issuance by the Commission of a final order in the form attached hereto as Attachment 1 (the “Proposed Order”). Each description of an agreement by the Parties contained in the Proposed Order is incorporated herein by reference and is accepted by each of the Parties as if fully set forth herein. Solely for purposes of settlement, the Parties stipulate and agree that the terms, findings, and ordering paragraphs of the Proposed Order constitute a fair, just and reasonable resolution of the issues raised in this Cause provided they are approved by the Commission in their entirety and without modification.

2. Amount of Stipulated Rate Increase. The OUCC and Petitioner stipulate and agree that Petitioner’s current rates and charges should be increased immediately upon the issuance of a Commission Order by 40% so as to produce \$726,589 in additional annual operating revenues (including Utility Receipts Tax). Petitioner’s revenue requirements to which

Petitioner and the OUCC stipulate and agree are set forth in the schedules attached hereto as Attachment 2. Attachment 3 consists of the schedule of rates which should be approved in this Cause. The Parties stipulate and agree that the rate increase provided herein is just and reasonable and should be approved. The Parties stipulate and agree the increase should be across-the-board.

3. Replacements and Improvements. The Parties agree to an annual allowance for replacements and improvements of \$424,800 based upon Petitioner's capital improvement plan. Petitioner shall provide to the OUCC annually a report of its replacements and improvements expenditures.

4. Operating Revenues. The Parties agree that test year water revenues should be adjusted to reflect additional revenues from a new large commercial customer in the amount of \$17,000.

5. Salaries and Wages and Related Operating Expenses. As described in the Verified Testimony of John M. Seever, C.P.A. in support of the settlement, the Parties agree that salaries and wages expense should include a portion of elected and appointed officials' annual salaries that had not been allocated to the water utility per the 2012 Salary Ordinance due to the financial condition of the utility. The Parties agree that the meter reader and billing clerk's salary and wages should be allocated 50% to the water utility and 50% to the sewage works, along with the applicable employee benefits for those employees.

6. Rate Case Expense. The Parties agree that test year operating expenses should be adjusted to reflect a five-year amortization of rate case expenses in an amount equal to the lesser of actual rate case expenses or \$80,000.

7. Additional Operating Expense Adjustments. The Parties agree to amortize tank painting expense over fifteen years and to exclude \$22,203 that the OUCC has designated as capital or nonrecurring expense items.

8. Non-Financial Terms of Settlement.

(a) True-Up of City Garage Lease Rental Payments. The Parties agree that the actual amount of the water utility's share of the lease payments for the new City garage will not be known precisely until completion of the financing of the garage. Since the figures in Petitioner's Case-in-Chief are estimates rather than actual amounts, the Parties agree that the Petitioner shall be required to true-up those amounts after the financing of the garage is complete. Petitioner shall file with the Commission, within 30 days after the issuance of the debt by the City, a report indicating the actual interest rate, amount borrowed, actual average annual debt service, debt service revenue requirements, and the impact that any difference would have on Petitioner's rates, plus an update to the report entitled "Allocation of Lease Rentals by Payment Source" which was included in Petitioner's work papers.

(b) Implementation of Petitioner's Water Treatment Plant Modification Plan. The Parties agree that Petitioner shall proceed with implementation of its water treatment plant modification plan.

(c) Annual Reports on PCE Well Contamination. The Parties agree that Petitioner shall annually provide to the OUCC, in concert with its Annual Report to the Commission, a written report that describes 1) the status of PCE

contamination, supported by PCE test results, and 2) its impact on the anticipated useful life of GAC filter media.

(d) Creation of Cross-Connection Program. The Parties agree that Petitioner shall develop a Cross-Connection Control Program designed to prevent cross-connections between Petitioner's water distribution systems and other water sources.

(e) Annual Reports on Periodic Maintenance. The Parties agree that Petitioner shall provide to the OUCC annually a report on periodic maintenance performed during the year, including, without limitation, well cleaning, tank painting, and GAC filter maintenance expenditures.

(f) Development of Water Conservation Plan. The Parties agree that Petitioner will develop a water conservation plan and present its plan to the Commission and the OUCC in its next rate case before the Commission.

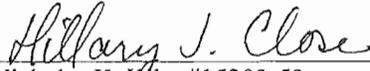
9. Mutual Conditions on Settlement Agreement. Petitioner and the OUCC agree for purposes of establishing new rates and charges for Petitioner that the terms and conditions set forth in this Stipulation and Settlement Agreement are supported by the evidence and, based on the Parties' independent review of the evidence, represent a fair, reasonable and just resolution of all the issues in this Cause, subject to their incorporation in a final Commission order in the form attached as the Proposed Order without modification or further condition which may be unacceptable to either party. If the Commission does not approve this Stipulation and Settlement Agreement or does not issue the final order in the form attached as the Proposed Order in its entirety without modification, the entire Settlement Agreement shall be deemed withdrawn,

unless otherwise agreed to by the Parties. Petitioner and the OUCC represent that there are no other agreements in existence between them relating to the matters covered by this Joint Stipulation and Agreement which in any way affect this Agreement.

10. Non-Precedential. As a condition precedent to the Stipulation and Settlement Agreement, the parties condition their Agreement on the Commission providing assurance in the final order issued herein that it is not the Commission's intent to allow this Stipulation and Settlement Agreement or the Order approving it to be used as an admission or as a precedent against the signatories hereto except to the extent necessary to enforce the terms of the settlement agreement. The parties agree that this Stipulation and Settlement Agreement shall not be construed 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 before any court of competent jurisdiction on these particular issues. This Stipulation and 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 a waiver of any position that either of the parties may take with respect to any or all the items resolved herein in any future regulatory or other proceedings and, failing approval by this Commission, shall not be admissible in any subsequent proceedings.

11. Authority to Stipulate. The undersigned have represented and agreed that they are fully authorized to execute this Stipulation and Settlement Agreement on behalf of their designated clients who will be bound thereby.

Respectfully Submitted,



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