

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF ) CAUSE NO. 44309 U  
PIONEER WATER, LLC FOR A NEW )  
SCHEDULE OF RATES AND CHARGES. ) APPROVED: JAN 15 2014

ORDER OF THE COMMISSION

**Presiding Officers:**  
**Larry S. Landis, Commissioner**  
**Marya E. Jones, Administrative Law Judge**

On February 22, 2013, Pioneer Water, LLC, (“Pioneer” or “Petitioner”) filed with the Indiana Utility Regulatory Commission (“Commission”) its Application for a New Schedule of Rates and Charges (“Application”) pursuant to Ind. Code § 8-1-2-61.5 and 170 IAC 14-1. Petitioner also requested authority to implement new Rules and Regulations for service, but subsequently withdrew that request on March 1, 2013. The Commission determined the Application was complete on March 11, 2013.

Pursuant to Ind. Code § 8-1-2-61.5, a formal public hearing is not required in rate cases involving small utilities with fewer than 5,000 customers, unless a hearing is requested by at least ten customers, a public or municipal corporation, or by the Indiana Office of Utility Consumer Counselor (“OUCC”). On March 24, 2013, thirty-two (32) of Petitioner’s customers requested a public hearing. On April 1, 2013, the Town of Leo-Cedarville (“Town”) requested a public hearing. On April 9, 2013, the Commission issued a Docket Entry to determine whether the OUCC had been in contact with any of the customers who signed the petition for public hearing or with anyone from the Town, and if so, the substance of any such contact. The Commission also questioned whether the OUCC supported a field hearing in this matter. On April 15, 2013, the OUCC responded that it was unaware of the customer petition until the Commission issued its April 9, 2013 Docket Entry. The OUCC responded that Anthony Swinger, its External Affairs Officer, had contact with the Town’s counsel, who explained that the Town was considering a resolution requesting a public hearing. Two days later counsel for the Town emailed Mr. Swinger a copy of the Town’s approved resolution. The OUCC responded that it supported a public field hearing consistent with Ind. Code § 8-1-2-61.5(b).

On May 23, 2013, the Town requested leave to intervene as a party in this Cause. On May 28, 2013, the Commission issued a Docket Entry providing notice of a public field hearing on July 11, 2013, in the Cedarville Park Pavilion located at 9825 St. Joseph Street in Leo-Cedarville, Indiana, beginning at 6:00 p.m. Neither the Petitioner nor the OUCC opposed the Town’s Motion to Intervene. On June 13, 2013, the Commission issued a Docket Entry granting the Town’s request to intervene. On July 10, 2013, Petitioner filed an Amended Application. Subsequently on July 11, 2013, approximately 40 people attended the field hearing and approximately nine (9) participants provided oral or written comments.

Based upon the Town's intent to file additional evidence, on August 2, 2013, the Commission issued a Docket Entry that established a procedural schedule for the submission of evidence and set October 29, 2013, as the date of the evidentiary hearing in this Cause.

Petitioner designated its Application, as amended and filed on July 10, 2013, to serve as its pre-filed evidence constituting its case-in-chief. The OUCC and Town filed testimony and exhibits constituting their respective cases-in-chief on August 15, 2013. Petitioner filed rebuttal testimony and exhibits on October 3 and 4, 2013. The Town's cross-answering testimony and exhibits to the OUCC's case-in-chief were filed on October 3, 2013.

On October 18, 2013, Petitioner filed its Motion to Conduct a Settlement Hearing, informing the Commission the Parties reached a settlement and requested the October 29, 2013 evidentiary hearing be used as a settlement hearing. Petitioner also advised that the Parties were unable to file the settlement agreement with the Commission five days or more prior to the October 29, 2013, evidentiary hearing. By Docket Entry dated October 21, 2013, the Presiding Officers notified the Parties the October 29, 2013, hearing date would be used as an attorneys' conference and the Parties were to file any settlement agreement on or before the attorneys' conference. The evidentiary hearing would be continued to a date determined at the attorneys' conference. Petitioner filed the Joint Stipulation and Settlement Agreement ("Settlement Agreement") and related exhibits on October 28, 2013. On November 6, 2013, Pioneer and the Town responded to Docket Entry questions posed by the Commission.

Pursuant to proper notice given as required by law, an evidentiary hearing was held at 3:00 p.m. on November 8, 2013 in Room 224, 101 West Washington Street, Indianapolis, Indiana. Petitioner, OUCC, and the Town appeared and participated at the hearing, but no member of the general public appeared or participated in the evidentiary hearing. The testimony and exhibits constituting Petitioner's, OUCC's and the Town's respective cases-in-chief, as well as the testimony and exhibits constituting Petitioner's rebuttal case and the Town's cross-answer, were made part of the record of this Cause without objection. The Commission also received into the record the Settlement Agreement and testimony supporting it.

Based upon the applicable law and the evidence presented herein, the Commission now finds:

1. **Commission Notice and Jurisdiction.** Pioneer is a "public utility" within the meaning of Ind. Code § 8-1-2-1 and filed its Application for a change in its rates and charges pursuant to Ind. Code § 8-1-2-61.5 and 170 IAC 14-1. The evidence establishes that Pioneer provided legal notice of the filing of its Application as required by 170 IAC 14-1-2(b). Subsequent to the filing of the Application and based upon the Town's intervention, the Commission required a formal public hearing in accordance with Ind. Code § 8-1-2-61.5(b). Proper notice of the hearing in this Cause was given as required by law. Therefore the Commission has jurisdiction over Pioneer and the subject matter of this Cause.

2. **Petitioner's Characteristics.** Pioneer is a Class C investor-owned water utility serving approximately 421 customers, mostly in the Town. Pioneer, an Indiana Limited Liability Company ("LLC"), was formed as a for-profit corporation in 1997 to acquire the assets of Pioneer

Village Water, Inc. ("PVW"). PVW was an Indiana non-profit corporation established for the purpose of providing water utility service to residents in and around the Pioneer Village Subdivision located in Cedar Creek Township of Allen County, Indiana. The Commission approved the transfer of PVW's assets to Pioneer in Cause No. 41089 pursuant to an Order dated August 26, 1998.

Pioneer is a two (2) member LLC; its members are Gordon Liechty and LaRuth Liechty. Petitioner provides management services through an affiliated company, namely Liechty Management Corporation ("Liechty Management"). Petitioner employs two (2) part-time employees and contracts with InSite, Inc. ("InSite"), a company that provides plant and system operations. Most of Petitioner's customers are located in or near one of three (3) residential subdivisions: Pioneer Village, Metea Valley, and Lions Gate. In addition to its residential customers, Petitioner serves several commercial customers, including the East Allen Elementary School and the Pine Hills Daycare. Petitioner also provides irrigation and private fire protection services to a small number of its customers.

Petitioner operates three (3) supply wells and has a treatment plant. Its distribution system consists of approximately 25,400 feet of PVC mains. Petitioner constructed a 200,000 gallon elevated storage tank in 1998. A plant expansion was completed in 2006, and extensions of water mains have occurred periodically. Petitioner installed a new flow meter for finished water in 2010.

Pursuant to the Commission's Order dated August 26, 1998 in Cause No. 41089, Petitioner's current rates and charges are identical to the rates and charges that were in effect when it acquired PVW's assets in 1998.

### **3. Evidence Presented.**

**A. Petitioner's Case-in-Chief.** Pioneer's Amended Application requested authority to increase its monthly recurring rates and charges on an across-the-board basis in two phases of 39.08% and 11.12%, respectively. These increases would provide Pioneer with the opportunity to earn additional revenue of \$64,343 in Phase I and \$25,455 in Phase II. Pioneer proposed these increases in order to generate funds needed to address operation and maintenance expenses, as well as debt it proposed to incur in order to repair and paint its water storage tower. Pioneer also requested approval to increase its existing Bad Check Charge and Reconnect/Disconnect Charge to \$24.95 and \$30.50, respectively, and establish a new Service Charge of \$30.50.

Petitioner's test year for the Amended Application ends December 31, 2011. For Phase I revenue adjustments Petitioner proposed a \$2,047 increase to normalize test year residential sales, and a \$43 decrease to normalize test year commercial sales. For Phase I expense adjustments Petitioner suggested several pro forma changes to test year expenditures. Specifically, Petitioner proposed a salary and wage increase of \$649 and an increase in Purchased Power Expense of \$85. Petitioner proposed a \$7,400 increase in maintenance expense, which included water tank painting at a cost of \$185,000 every 25 years, water tank painting supervision, and meter replacement.

Petitioner proposed an increase in payroll taxes in the amount of \$238 related to the proposed salary and wage increase. Petitioner suggested an unspecified miscellaneous expense

increase of \$28, a property tax increase of \$8,159, and a decrease in the Commission fee in the amount of \$96. Petitioner proposed an increase in depreciation expense of \$13,415, using a 2% composite depreciation rate on utility plant in service of \$670,768. Petitioner emphasized that because of the water treatment plant, it used a 2% depreciation rate. For Federal taxes, Petitioner noted a pro forma present rates decrease of \$2,459 and pro forma proposed increase of \$8,666. For State taxes, Petitioner suggested a pro forma present rates decrease of \$1,310 and pro forma proposed increase of \$5,451. For Utility Receipts Tax, Petitioner proposed a pro forma present rates increase of \$997 and a pro forma proposed increase of \$899.

In the Phase I increase, Petitioner calculated a rate base of \$454,740 and working capital of \$17,582. Petitioner has a capital structure of 56% equity and 44% debt, with \$296,225 of common equity and long term debt of \$228,422. Petitioner has a 4.13% interest rate on its long term debt. Petitioner's weighted cost of capital is 9.53%. Petitioner's synchronized interest expense is \$8,167, based on a rate base of \$454,740 and weighted cost of debt of 1.796%.

In the Phase II increase, Petitioner requested a rate increase of 11.12%, which equates to a revenue increase of \$25,455, and is based upon a rate base of \$644,784 and cost of capital of 8.61%. Petitioner anticipated incurring \$190,000 of debt to be amortized over 15 years at a 6.00% interest rate.

For Phase II expense adjustments, Petitioner proposed several pro forma changes to test year expenditures. Specifically, Petitioner suggested an increase of \$3,833 in property expense to reflect capital spending. Petitioner anticipated an increase in bad debt expense of \$271 and \$30 for pro forma present and proposed rates, respectively. Petitioner proposed an increase in depreciation expense of \$8,104, using a 2.5% composite depreciation rate on utility plant in service of \$860,768 and an increase in the Commission fee of \$271 for proposed operating revenues. For Federal income taxes, Petitioner proposed pro forma present rates decrease of \$3,182 and a pro forma proposed increase of \$3,428. For state taxes, Petitioner suggested a decrease of pro forma present rates of \$1,959 and a pro forma proposed increase of \$2,156. Petitioner proposed a utility receipts tax increase of \$2 and \$356 for pro forma present and proposed rates, respectively.

Petitioner calculated a rate base after Phase II of \$644,784 and calculated working capital of \$17,626. Petitioner proposed a capital structure of 58.5% equity and 41.5% debt, with \$296,225 of common equity, and long-term debt of \$418,422. Petitioner suggested a cost of equity rate of 13.70%, and a 5% interest rate on its long-term debt. Petitioner's proposed weighted cost of equity is 8.61%. Petitioner's synchronized interest expense is \$18,876 based on a rate base of \$644,784 as of Dec. 31, 2011, and weighted cost of debt is 2.927%.

Instead of completing a cost of equity study to support its proposal, Petitioner proposed a cost of equity rate of 13.70%. In support of its proposal, Petitioner used Indiana American's most recent cost of equity, 9.70%, and added 4.0% to arrive at 13.70%.

**B. OUCC's Case-in-Chief.** The OUCC submitted as its case-in-chief a report prepared by its Utility Analysts Richard Corey, Harold Rees, and Edward Kaufman, and the prefiled testimony of Richard J. Corey. The OUCC recommended the Commission authorize Pioneer to increase its rates and charges by 1.52% in a single phase in order to generate \$2,714 of additional

revenue. The OUCC expressed no objection to Pioneer's proposed changes to its non-recurring charges, except to recommend that the Bad Check Charge be rounded to \$25 and both the Reconnect/Disconnect Charge and Service Charge be rounded to \$30.

In reaching its recommendation on an increase to Pioneer's monthly recurring rates and charges, the OUCC disagreed with several adjustments Pioneer made to its test year revenues and expenses. Specifically, the OUCC disagreed with, and proposed different adjustments to, Pioneer's proposed test year revenues, as well as to Pioneer's test year operating and maintenance expenses for tank painting, management fees, rate case expense, postage expense, and the Commission fee. The OUCC also proposed adjustments to Pioneer's test year operating and maintenance expenses to remove certain non-recurring expenses, capital items, and disallowed expenses. The OUCC adjusted Pioneer's proposed depreciation expense and tax expenses.

The OUCC's recommended rate increase also reflects its disagreement with Pioneer's proposed rate base and weighted cost of capital. The OUCC adjusted Pioneer's proposed rate base to remove tank painting and other expenses inappropriate for inclusion in rate base and added capital items incorrectly recorded as operation and maintenance expenses. The OUCC also proposed adjustments to Pioneer's calculation of accumulated depreciation and working capital. Regarding weighted cost of capital, the OUCC agreed with the capital structure and long term debt used by Pioneer, but disagreed with Pioneer's cost of equity.

Given Pioneer's small size, the OUCC agreed with Pioneer's decision not to incur the expense necessary to perform a complete cost of equity study. In the Report, the OUCC stated it did not perform a cost of equity study because the costs to challenge Pioneer's proposed cost of equity would exceed any benefit, and it is not in the public interest for Pioneer to incur significant litigation expenses when this expense may ultimately be borne by the ratepayers. The OUCC posited in its report that Pioneer's proposed cost of equity is unreasonably high, and exceeds investor expectations. The OUCC Report noted the OUCC could not recall when such a high proposed cost of equity was requested. Citing Cause Nos. 44097 and 44104, the OUCC recommended a 9.25 % cost of equity. The OUCC further refined its suggested cost of equity by recommending 10.50% cost of equity based upon its determination to exclude tank painting as a capital item. The OUCC noted that even though its cost of equity recommendation is somewhat high, the effect on rates is small, and, in part, recognizes Pioneer's decision not to hire a consultant to determine its cost of equity.

The OUCC also recommended the Commission's order:

1. Require Petitioner to establish a regular program of monitoring its water loss, locating leaks and submitting separate water loss reports for the calendar years 2013 and 2014 as an attachment to the respective Commission Annual Reports;
2. Require Petitioner to put into place other Maintenance and Operations recommendations, including: (a) adopting a 5-year meter replacement program, (b) adopting a 25-year tank painting interval, and (c) adopting a three-year interval for valve turning; and
3. Require Petitioner to establish a restricted account for funds received for tank painting and

maintenance and to provide the OUCC and Commission detail of the reserve account activity annually as an attachment to the annual report.

C. **Town's Case-in-Chief and Cross-Answering Testimony.**

1) **Town's Case-in-Chief.** Thomas Theodore Nitza, Jr., President, The Secant Group, Inc., hired to assist the Town in presenting its case, testified that the Town intervened because all of Petitioner's customers are the Town's residents, and the Town is Petitioner's customer at its Town Hall location. He noted Petitioner also serves a school and several businesses located inside the Town.

Mr. Nitza testified Petitioner's proposed rate will greatly exceed other water utilities in Allen County. He noted that Petitioner's rates already exceed that of the City of Fort Wayne and are similar to Utility Center, Inc. D/B/A Aqua Indiana. Mr. Nitza also testified Petitioner's water meter expense is inappropriately high, and its management compensation level is excessive. He also stated Petitioner lacks significant managerial and ownership accomplishments and provides inadequate service. Mr. Nitza recommended certain management and ownership inadequacies be addressed as a condition for any Commission approved rate increase.

After expounding on certain proposed adjustments to Petitioner's operation and maintenance expenses, rate base and its cost of capital, Mr. Nitza testified the Town had nine recommendations for Petitioner as follows:

1. Liechty Management's maximum level of management compensation should be capped at no more than 12.48% of the previous year's total revenue;
2. Due to poor management by Liechty Management, the 200 basis points removed from the Cost of Equity determination should remain excluded. If conditions improve, subsequent rate increase requests could consider the addition of this benefit to Petitioner's owners;
3. Petitioner should complete a Drinking Water Master Plan for the continued growth and development of source water, treatment, storage and distribution components of the public water utility;
4. Petitioner should be required to complete a Water Conservation Plan for preparation of emergency or seasonal water supply shortages;
5. Petitioner should be required to complete an Asset Management Plan for the proper proactive monitoring and management of the infrastructure providing service to its customers;
6. A dedicated escrow account should be established for the accumulation of funding resulting from Petitioner's depreciation expense. Initial annual contribution to the account should be \$13,465 based on the approved revenue requirement. Disbursement from this account for projects related to the infrastructure management of Petitioner should not be unreasonably withheld;

7. A dedicated escrow account should be established for the accumulation of funding for long-term painting and other infrastructure management issues related to the elevated storage tank serving Petitioner. Initial annual contributions to the account should be \$11,000 based on the approved revenue requirement;
8. Petitioner should file quarterly reports of customer complaints with the Commission for the next 18 months. The reports should include the customer and complaint information and the steps Petitioner has taken to resolve the issue; and
9. Petitioner should complete a Customer Service Improvement Plan that investigates the costs and benefits of improving and expanding the customer service offerings. Topics should include better office accessibility, payment options, complaint intake and follow-up, web information and services, outreach and education and other related items for the benefit of customers. Customer survey feedback and best management practices should be included in the consideration of improvements. Technical Conferences that include the OUCC and the Town should be conducted during this process.

Mr. Nitza testified that a key requirement for the third, fourth and fifth recommendations should include required Technical Conferences and Commission review and approval of the plan before allowing the proposed Phase II rate increase to go into effect. With regard to the sixth and seventh recommendations, he said the Commission should initially review and approve protocols, procedures and bylaws for the fiduciary management of the escrow account. The escrow account's trustee position should be assigned to the Town's attorney or the Township's attorney.

The Town also offered the prefiled testimony of Dr. Maneesh K. Sharma, Associate Professor of Finance and Director of MBA Program at Indiana University-Purdue University Fort Wayne and Principal of Financial Analysis, Valuation and Consulting, LLP, concerning cost of capital, rate base and taxes. Dr. Sharma concluded, after noting various proposed adjustments to Petitioner's operation and maintenance expenses, rate base and cost of capital, that Petitioner's rates and charges should be reduced by no less than 8.33% in Phase I and increased by no more than 15.66% in Phase II.

2) Cross-Answering Testimony. Mr. Nitza agreed with the OUCC's method of a single rate adjustment rather than a bifurcated adjustment. Dr. Sharma testified he concurred with several of the adjustments proposed by the OUCC to Pioneer's proposed test year revenues and expenses. Noting that the OUCC had relied on valid information that was not previously shared with the Town, Dr. Sharma specifically stated he agreed with the OUCC's proposals regarding operation and maintenance expenses for tank painting, management fees, and rate case expenses. Dr. Sharma also testified that he agreed with adjustments to the Commission fee, removal of certain non-recurring expenses, capital items and disallowed expenses. Dr. Sharma concurred with the OUCC's proposed adjustment to Pioneer's depreciation expense and tax expenses.

Dr. Sharma agreed with the removal of the tank painting cost from rate base, but proposed to include the cost as an expense item. Dr. Sharma disagreed with Pioneer's cost of capital and offered evidence supporting a revised cost of capital. Thus, based on the Town's revised position

and utilizing a one-time rate adjustment, Dr. Sharma recommended that Pioneer’s monthly recurring rates and charges be decreased by 2.25%.

Regarding cost of equity, Dr. Sharma, used the Discounted Cash Flow model (“DCF”) and Capital Asset Pricing Model (“CAPM”). Initially, Dr. Sharma proposed a cost of equity for Phase I of 6.44% and Phase II of 6.92%; but in cross-answering testimony, Dr. Sharma recommended a cost of equity of 6.44% based on an average of his results from the DCF, 8.19%, and results from the CAPM, 4.69%. Dr. Sharma did not add a small company additive because of concerns raised by Mr. Nitza over service quality. Neither Mr. Nitza nor Dr. Sharma expressed an objection to Pioneer’s proposed changes to its non-recurring charges.

**D. Pioneer’s Rebuttal Case.**

1) **Pauline M. Ahern, CRRA.** On Rebuttal, Pioneer’s witness Pauline M. Ahern, CRRA, Principal of AUS Consultants, recommended a cost of equity of 11.50%, based on the DCF Model, Risk Premium Model, CAPM, and Comparative Analysis. She included results of a new model to determine the risk premium in the Risk Premium Model and CAPM, the Predictive Risk Premium Model (“PRPM<sup>TM</sup>”). The following table summarizes the results:

DCF	8.72%
Risk Premium Model	11.06%
CAPM	10.11%
Comparable Risk	10.77%
Indicated Cost of Equity	10.45%
Add: Credit Risk	0.04%
Add: Business Risk	1.00%
Indicated Cost of Equity	11.49%
Final Recommendation	11.50%

Ms. Ahern found several flaws in Dr. Sharma’s methodology and inputs in his models. For example, the DCF has a tendency to misspecify an investor’s required return on equity when the market value of common stock differs significantly from its book value and the only measure of growth should be earnings per share. For the CAPM, Dr. Sharma incorrectly relied upon a current/recent/spot yield on 10-Year Treasury Bonds; relied on a geometric mean historical market equity risk premium in direct contrast to the Commission’s long-established policy; and calculated Beta incorrectly.

Based on the adjustments made by the OUCC with which Pioneer agreed and reflecting those matters where disagreement continued, Pioneer proposed that the Commission authorize it to raise its monthly recurring rates and charges by 23.35% in a single phase, allowing it the opportunity to earn \$41,693 in additional revenue.

2) **Scott A. Miller, CPA.** Scott A. Miller, C.P.A., H.J. Umbaugh & Associates, Certified Public Accountants, LLP, began by noting that Petitioner accepts the OUCC’s revenue adjustments, the OUCC’s Salary and Wage expense, Purchased Power, Insurance Expense, Payroll Taxes, Postage Expense, Property Taxes, Commission Fee, Depreciation Expense and

Disallowed Expense. He testified Petitioner agrees with the OUCC's rate base adjustments, including the addition of capitalized items, the elimination of unsupported utility plant in service, and the reduction in accumulated depreciation to reflect a composite depreciation rate of 2%, in lieu of an accelerated tax depreciation rate.

He testified Petitioner disagrees with the OUCC's Management Fee decrease because it is arbitrary, and is not a duplication of services provided by InSite, Inc. Mr. Miller stated Petitioner opposes the OUCC's Rate Case Expense amount of \$15,000, because it is the amount Petitioner proposed when this rate request was a small utility rate change application. He noted Petitioner's rate request is now a full rate case with an estimated cost of \$50,000 because Petitioner has retained legal counsel and a rate of return expert. He stated Petitioner also opposes the OUCC's proposal to amortize rate case expense over five (5) years. Mr. Miller testified Petitioner proposes a three (3) year amortization period because it thinks additional system growth will be slower than in the past, making it difficult to absorb operational cost increases. He stated Petitioner commits to filing a new rate case within three (3) years.

Mr. Miller testified the OUCC failed to recognize that Petitioner's elevated water tank is currently 15 years old, and has never been painted. He noted Petitioner's rates have been in effect since 1994, prior to the installation of the storage tank, and therefore have never provided sufficient funding to build a reserve to address tank painting. He testified Petitioner wants to complete the required tank painting now, which requires borrowing and capitalizing the expense. Mr. Miller opined that if the Commission does not approve the borrowing and capitalizing of funds, Petitioner will have to delay tank painting in order to build up the required funding. He stated Petitioner requests the amortization period for tank painting be no greater than 10 years if the Commission approves borrowing and capitalizing this expenditure.

Mr. Miller stated Petitioner disagrees with the OUCC's proposed working capital of \$14,432, in favor of \$18,807, which reflects Petitioner's operating expense adjustments. This results in Petitioner's original cost rate base of \$528,112. He stated Petitioner also disagrees with the OUCC's rate of return on original cost rate base and noted that Petitioner's witness Ms. Ahern proposes a cost of equity of 11.50%, which results in a weighted cost of capital of 8.29%.

Mr. Miller testified Petitioner opposes the Town's various recommendations. He noted Petitioner is not double counting meter replacement expense as indicated by the Town's witness, Mr. Nitza, because meter expenditures are included in both test year expense figures and on Petitioner's Schedule 6(e) of its application. He stated the total pro forma maintenance expense of \$18,245 is subsequently reduced by \$10,845 of test year expense, resulting in a net \$7,400 adjustment, which reflects the addition of the "new" requirement for tank painting only. Mr. Miller testified this adjustment is made to avoid double counting meter expense.

Mr. Miller testified that it is inappropriate for Mr. Nitza to compare Petitioner's sales and general administration expenses to utilities in Dr. Sharma's proxy group. He opined that utilities in Dr. Sharma's proxy group have annual revenues many multiple times greater than Petitioner, enjoy larger economies of scale, and likely have parent entities that assist with their operations; whereas Petitioner is solely reliant on Liechty Management and InSite, Inc. Mr. Miller further testified that it is inappropriate to compare the management expense for a small utility to such expense for multi-

state utility conglomerates, and suggests that management fees could have been better used to fund tank painting expense.

Mr. Miller testified that Petitioner disagrees with all nine (9) of the Town's recommendations. He testified that conducting a cost of service study is unnecessary and would be an expensive, time-consuming waste of rate-payer money because the majority of Petitioner's customers are residential. Further, a cost of service study has no bearing on determining an appropriate level of management compensation.

He noted that Dr. Sharma's reduction of 200 basis points to Petitioner's cost of capital is arbitrary and inappropriate. He testified that none of the recommended plans (i.e., Drinking Water Master Plan, Water Conservation Plan, and Asset Management Plan) are legally required and would be expensive to complete, with questionable benefit for a small utility like Petitioner. He stated the proposal to have dedicated escrow accounts for depreciation funds and tank painting expense should be rejected because Petitioner is capable of managing its cash and investments. He opined that requiring quarterly reports of customer complaints to the Commission would only increase the cost of operations to Petitioner without generating any benefit to the customer and that a Customer Service Improvement Plan would require funding which Petitioner lacks. He noted that such a plan may not produce a reasonable benefit when compared to the associated cost for a utility of Petitioner's size. Mr. Miller testified that many operational improvements have been made to Pioneer under the management of Liechty Management.

He testified Petitioner proposes an original cost rate base is \$528,112 and a weighted cost of capital of 8.29%. Mr. Miller noted this results in net operating income of \$43,781 which when compared to pro forma present rate income of \$2,817 result in an additional revenue requirement of \$40,964. He noted that after applying the gross revenue conversion factor, Petitioner should be granted an increase in revenue of \$41,693 or a 23.355% across-the-board increase in present rates and charges.

3) **Gordon Liechty**. Gordon Liechty, Member of Pioneer Water, LLC and owner of Liechty Management, Inc., testified that Petitioner has grown from serving approximately 120 customers to 423 customers (404 residential and 19 commercial) as of September 1, 2013. He noted Petitioner also provides irrigation and private fire protection services to a few of its customers.

Mr. Liechty testified Petitioner's assets have increased from two 8-inch ground wells that supplied approximately 12,597,000 gallons of water and less than 2 miles of 2-inch to 8-inch pipe in 1997, to approximately 12,900 feet of 6-inch line, 5,000 of 8-inch line and 7,500 feet of 10 and 12-inch lines. He noted Petitioner added a 200,000 gallon elevated storage tank in 1998, another well in 2006, and sold in excess of 39,000,000 gallons of water to its customers in 2012. He testified that in 2003, Petitioner made treatment plant upgrades that greatly reduced the iron in its finished water, and allowed it to operate at 200% of its design capacity on an emergency short-term basis to accommodate increased water usage during dry summers.

He testified Petitioner made other improvements in 2006 including: adding a filter and upgrade to the treatment plant's high service pumps, which increased the capacity of its plant from

100 to 300 gallons/minute; installing a new computerized control system to the treatment plant to better manage the system's wells, aerators, chlorination and high service pumps; and adding inverter drives to the high service pumps, which reduced power and labor costs. He noted Petitioner installed an automatic-start generator at its treatment plant to provide power to its pumps and other equipment, which allows continuous water service at times when customers are without electrical service. Mr. Liechty testified that with InSite's assistance, Petitioner has also implemented consistent standards for project and plan review, specifications for hydrants, valves and other distribution system appurtenances, developed a GIS system for the distribution system, and implemented a record system for valve, hydrant and treatment plant maintenance. He noted that Petitioner had InSite implement an automated system to communicate advisory and emergency notifications within 15 minutes to customers.

Mr. Liechty testified Pioneer has two part-time employees, one who reads meters and provides office services and another who provides maintenance, repair and other field services. He stated Petitioner contracts with InSite to provide routine operation and maintenance of Petitioner's treatment and distribution system while Liechty Management, pursuant to its contract with Petitioner, provides overall management of Petitioner's business affairs and operations, including hiring and supervising all persons providing services to Petitioner. Mr. Liechty testified that LaRuth Liechty supervises and supplements Petitioner's part-time staff and spends approximately 30 hours/week managing banking, accounts payable, office supervision and administrative functions.

Mr. Liechty testified he spends approximately 40 hours/week supervising employee activities, providing on-site trouble shooting, repairs, inspections, and installations, responding to utility location requests, handling customer relations, planning, compliance, and performing financial tasks. He noted that he is on call 24 hours a day, 7 days a week to take emergency calls. Mr. Liechty clarified that if there is a main break or a failure of a component that has the potential to disrupt service, Mr. Liechty or an InSite representative responds and conducts an investigation and makes arrangements for appropriate repairs or remedial action. He clarified InSite's response to a main break or other problem is outside the scope of its current contract, and is paid separately for those services.

Mr. Liechty testified that Petitioner accepts the OUCC's recommendations related to water loss, meter replacement, valve turning, and including a comment on conservation in its annual Consumer Confidence Report. He noted Petitioner intends to research and implement where possible, water conservation measures recommended by the Indiana Water Shortage Task Force. He stated Petitioner also agrees with the OUCC's accounting presentation for new rates and charges, but that Petitioner disagrees with the OUCC's proposed treatment of tank painting and maintenance expenses, Liechty Management fee, and rate case expense.

Mr. Liechty reiterated Mr. Miller's concerns with the OUCC's proposed rate case expense and amortization. Mr. Liechty pointed out that Petitioner's current rates and charges, established in 1998 before the installation of the storage tank, did not make provision for tank painting and maintenance costs. Mr. Liechty clarified that the OUCC's recommendation that painting and maintenance costs be amortized over 15 years does not acknowledge that Petitioner's tank has been in service for approximately 15 years, and the tank's coating cannot be expected to last more than

25 years. He testified that if the Commission accepts the OUCC's recommendation, Petitioner requests those costs be amortized over 10 years. He testified that if the Commission authorizes amortization over 10 years, Petitioner will accept the OUCC's recommendation to establish a separate restricted account to hold funds collected through its rates for tank painting and maintenance, and provide information regarding the account in its Annual Report to the Commission.

Mr. Liechty testified Petitioner disagrees with the OUCC's proposal to reduce Liechty Management's annual fee of \$48,000/year to \$33,000/year. He noted the OUCC erroneously concluded Liechty Management's services and InSite's services are duplicative. He clarified that Liechty Management responds to customer complaints of low pressure and all other issues, including, but not limited to, inspection, repair and installation of meters, and arrangement for repair of damaged distribution mains. Liechty Management also works with crews employed to install new water taps, inspects new water hook-ups, meters, and hydrant flushing and valve turning activities that occur outside of the treatment plant. He noted that all of those services are outside the scope of InSite's contract, and to the extent InSite is involved in those matters, InSite is compensated separately from the terms of its contract. Mr. Liechty testified that Liechty Management is on call 24/7 to respond to emergency calls from customers while InSite is on call 24/7 to respond to emergency calls from Liechty Management and alarms on Petitioner's treatment system. Mr. Liechty testified Petitioner and Liechty Management intend to enter into a new contract that specifically identifies the services provided by Liechty Management, and otherwise complies with Commission requirements governing the content of affiliate agreements.

Mr. Liechty stated Petitioner also disagrees with the Town's comparison of its rates to those of the City of Fort Wayne because Fort Wayne has significantly more customers, which increases its economies of scale. Fort Wayne is a municipality, pays no income or property taxes, and has access to tax-exempt financing. He opined that as an investor-owned utility, Petitioner does not have these advantages. He noted Utility Center has a much larger customer base and benefits from economies of scale and support as a subsidiary of Aqua America, Inc., a multi-holding company while Petitioner does not have these advantages.

Mr. Liechty testified Petitioner similarly opposes the Town's argument that Liechty Management's fee is excessive. Mr. Liechty disagreed with the Town's expert who compared Petitioner's sales and general administration expense as a function of 2012 revenue at 30%, with nine (9) Value Line water utilities who averaged 12.28%. He stated this was an erroneous comparison because many utilities in the sample of nine (9) are holding companies, not operating utilities, and all are much larger than Petitioner. He noted the smallest of the companies in the sample has revenue 250 times greater than Petitioner. Mr. Liechty went on to opine that a cost of service study is expensive and would not have provided any useful information in the determination of an appropriate management fee. Mr. Liechty then observed the \$48,000 management fee equates to approximately \$13.40/hour, which he believes is appropriate, and even low. He stated that for several years in the past, Liechty Management has been paid less than this contracted amount. He emphasized that because Liechty Management is a contractor, Petitioner does not have to pay income taxes. He stated Petitioner has not paid Gordon or LaRuth Liechty any separate distribution for being a member of Petitioner and that Petitioner has avoided occupancy costs, because Liechty Management provides a business office, work and storage space at no cost. He also noted that

Liechty Management makes available to Petitioner certain heavy equipment owned by Petitioner at no markup cost. Mr. Liechty testified that Liechty Management has held rates and charges constant while expanding the size of its system and improving the quality of its service through various improvements.

He went on to state that Petitioner opposes Mr. Nitza's recommendations to implement various operational plans and that there is no regulatory requirement to implement the various plans suggested. He noted the Commission considers these elective items for small utilities and because of the cost, Petitioner would not implement any of these plans without a valid need to do so. Mr. Liechty also noted Petitioner is not aware of any regulatory requirements governing where a utility's office is located or how many and what bill payment options should be made available to customers. Mr. Liechty noted that many of the written customer comments received at the field hearing or thereafter were directed at the proposed rate increase, not any issue with water quality or service. He noted that Petitioner has not received any complaints from its customers regarding its office location or bill payment choices. He testified Petitioner's current office location and payment options are cost-effective for a utility its size. Finally, Mr. Liechty stated the Town has never made a complaint or expressed dissatisfaction with Petitioner's service and water quality, either as a customer or on behalf of residents. He did note, however, that both the Town and the City of Fort Wayne, through Mr. Nitza's representation, have approached Mr. Liechty about acquiring Pioneer Water, LLC.

4) **William L.G. Etzler, P.E.** William L.G. Etzler, a registered Professional Engineer in Indiana, testified that in his professional opinion Pioneer Water, LLC is a well-run utility. He noted that Petitioner has no major water quality issues, save for naturally occurring hard groundwater. He stated that Pioneer's Consumer Confidence Reports over the last several years show that the water Pioneer supplies to its customers meets all applicable water quality requirements. He noted that some customers have expressed concerns with the "hardness" of Petitioner's raw water supply that requires the use of water softeners by some customers, but indicated that water hardness is not unique to Petitioner. He testified that groundwater in the northern part of Indiana is heavily-laden with minerals that contribute to its being "hard" and which cannot be removed without additional treatment equipment. He also opined that water softening equipment would be expensive for Petitioner to install and, given its small size, could result in a significant increase in customer rates. He testified that Petitioner was recognized by the Indiana Rural Water Association in 2009 as having the third best tasting water in Indiana, and was awarded second place in 2012.

Mr. Etzler testified Pioneer's management has accomplished a lot by installing and adopting a modern filtration system, a computer operated plant, and back-up power generation, all without a rate increase in 15 years. He noted that Petitioner employs or contracts with personnel capable of properly operating and maintaining its facilities, and performing administrative functions appropriate to its size.

Mr. Etzler stated that the Commission should reject Mr. Nitza's recommendations, except for the suggestion concerning InWarn. Mr. Etzler testified that there is no legal requirement for a water utility to pursue or implement the items recommended by the Town. Mr. Etzler testified it would not be worthwhile for Pioneer to conduct a cost of service study. He opined that if new

housing development were to occur, then planning might be required, but Pioneer's current infrastructure is adequate to accommodate current growth projections. Mr. Etzler testified that an informal asset management program is in place and Petitioner has excellent records of the location of pipes, valves and fire hydrants, and uses this information to exercise valves, flush mains and make necessary repairs. Mr. Etzler testified that Petitioner does not need a conservation plan, but should provide customers information about the value of conservation efforts, and the utility should be prepared for high usage conditions. Mr. Etzler testified that Petitioner should join InWarn.

4. **Settlement Agreement.** On October 28, 2013, the Parties filed a Settlement Agreement. The Settlement Agreement addresses all of the issues before the Commission as follows:

A. **Compliance with Regulatory Requirements.** The Petitioner is a public utility providing water utility service to fewer than 5,000 retail customers and does not extensively serve another utility. The provisions of 170 IAC 14-1-2(a)(5) and (6) are not applicable to Petitioner's Amended Application because Petitioner is not a non-profit utility, conservancy district or municipal utility. Petitioner is entitled to request an increase in its rates and charges for service pursuant to Ind. Code § 8-1-2-61.5 and 170 IAC 14-1. Petitioner's Amended Application also satisfies all of the requirements of Ind. Code § 8-1-2-61.5 and 170 IAC 14-1.

B. **Test Year.** The period used by the Parties for determining Petitioner's revenues and expenses incurred in providing water utility service to its customers is the twelve months ending December 31, 2011. The Parties agree that, with adjustments for changes that are fixed, known and measurable, this test year is sufficiently representative of Petitioner's normal operations to provide reliable information for ratemaking purposes.

C. **Rate Base and Allowed Return.** The Parties agree that the original cost depreciated value of Petitioner's utility properties used and useful for the convenience of the public as of December 31, 2011 is \$527,037. For purposes of this proceeding only, the Parties agree \$527,037 is also the fair value of Petitioner's properties in service and used and useful for the convenience of the public as of December 31, 2011. The Parties agree that a rate of return of 7.73% will adequately and fairly compensate Petitioner for its investments, while maintaining Petitioner's financial viability. As shown in Joint Settlement Exhibit 1, applying 7.73% to Petitioner's original cost rate base of \$527,037 generates a fair return of \$40,740.

D. **Net Operating Income at Present Rates.** Petitioner's pro forma net operating income under its present rates is \$11,418. The Parties agree \$11,418 fails to provide a fair return on the fair value of its properties used and useful in providing water utility service for the convenience of the public, and is therefore unjust and unreasonable and should be increased.

E. **Allowed Increase.** The Parties agree that Petitioner's current monthly recurring rates and charges should be increased in a single phase to produce additional operating revenues of \$29,844 and, together with other revenue, total pro forma operating revenues of \$209,169, representing a 16.71% increase. The amount of that proposed increase reflects the effect of the increased revenue on Petitioner's bad debt rate, Indiana gross receipts tax and the Commission's fee. Giving appropriate weight to the need for Petitioner to discharge its public

duties and to earn a return commensurate with that earned by enterprises of corresponding risk, the Parties recommend that the Commission should find that rates and charges estimated to produce such operating revenues are just and fair and should allow Petitioner the opportunity to earn a reasonable return on its property dedicated to providing water utility service to the public.

**F. New Schedule of Rates and Charges.** A proposed schedule of rates and charges is set forth in Joint Settlement Exhibit 2 to the Settlement Agreement. The Parties recommend that the Commission find that the monthly recurring rates and charges, non-recurring charges and other terms provided for in the proposed schedule attached as Joint Settlement Exhibit 2 are sufficient to produce the results described in Paragraph E above and are each otherwise fair, just, reasonable and non-discriminatory.

**G. Additional Agreements of the Parties.** In addition to the matters described above, the Parties agree that:

i. Petitioner shall file a general rate case no later than three (3) years from the date of the final order in this Cause, unless the OUCC approves of a delay in writing at least ninety days prior to the expiration of the three-year period.

ii. Petitioner shall establish a separate restricted account to hold all funds collected through its rates and charges for tank painting and maintenance and provide information on activity in the account as part of its Annual Report to the Commission.

iii. At the conclusion of a three-year period beginning with Petitioner's implementation of the monthly recurring rates and charges approved in this Cause, Petitioner shall file an amended tariff removing any costs associated with its rate case expense in this Cause from its base rates.

iv. Petitioner shall establish a regular program of monitoring its water loss, locating leaks and submit separate water loss reports for the calendar years 2013 and 2014 as an attachment to the Annual Reports it files with the Commission for each of those years.

v. Petitioner shall complete the change of its manual-read meters to remote-read meters within five (5) years of the date a final order is issued in this Cause.

vi. Petitioner shall implement a program of turning all valves on its facilities every three (3) years.

vii. Petitioner shall investigate what cost-effective steps it can take to further water conservation and encourage more efficient use of water by its customers, including without limitation, adding a brief comment concerning efficient water usage to its annual Consumer Confidence Report, and implementing where considered possible the water conservation measures that the Indiana Water Shortage Task Force has recommended for water utilities.

viii. Petitioner shall investigate within 12 months of the issuance of a final order in this Cause the possibility of having a comprehensive master plan prepared for its system

and share the results of its investigation with the Town; provided, however, Petitioner shall have no obligation to have a comprehensive master plan actually prepared unless Petitioner first determines that incurring the costs associated with preparing such a plan would be prudent and such costs would be subject to recovery through the rates and charges collected from customers. Notwithstanding the foregoing, Petitioner shall provide the Town with such information about Petitioner as the Town may reasonably request for land use planning and economic development purposes, including without limitation information on system facilities and capabilities and the utility's assessment of the prospects of usage and customer growth.

## 5. Commission Discussion and Findings.

A. Settlement Agreement. 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)). The Commission's own procedural rules require that settlements be supported by probative evidence. 170 IAC 1-1.1-17(d). Therefore, before the Commission can approve the Settlement Agreement, we must determine whether the evidence in this Cause sufficiently supports the conclusions that the Settlement Agreement is reasonable, just, and consistent with the purpose of Indiana Code ch. 8-1-2, and that such agreement serves the public interest.

This Cause was initiated by Pioneer's filing of its Application in accordance with Ind. Code § 8-1-2-61.5 and 170 IAC 14, which provides a streamlined procedure for small utilities to reduce the cost and time required for obtaining rate relief versus a typical rate case. Unfortunately, however, this proceeding evolved into a more formal and extensive proceeding with the Town's intervention and request for an evidentiary hearing. While in some instances a formal evidentiary proceeding provides additional benefits, it is clear from the evidence presented in this Cause that this was not such an instance.

In this case, Pioneer accepted most of the adjustments made by the OUCC to Pioneer's accounting evidence and, to the extent it overlapped with the OUCC's case, those adjustments that were also recommended by the Town. The matters that Pioneer continued to dispute in its rebuttal testimony were few, and the Settlement Agreement reflects the Parties' agreement on what they consider an appropriate resolution of each. We fail to see any reason that the Parties' agreement could not have been reached had the case proceeded without the Town's formal intervention and evidentiary hearing, and with much less expense. However, it appears that the Parties forgot the importance of communication, both in terms of utility outreach to its customers and of customers

sharing concerns with the utility, as well as their ability to communicate informally with one another while the small utility procedure was in progress.

As demonstrated by the evidence, the lack of communication and an established working relationship between the utility and its customers resulted in a significant increase in rate case expense. After the Town intervened and requested a formal evidentiary hearing, the rate case expense increased significantly from an estimated \$15,000 in the initial Application to the approximately \$42,200 agreed upon in the Settlement Agreement. Pioneer's witness Mr. Miller testified that Pioneer would likely have had a final rate case expense of \$50,000 had this case been fully litigated. Pet.'s Ex. SAM-R at p. 6. It is unfortunate that the 421 ratepayers of this small utility must shoulder these increased costs for a result that could likely have been achieved through the informal small utility process.<sup>1</sup>

The majority of the increase in rate case expense was driven by Petitioner's need to retain an attorney for the evidentiary hearing and to retain experts to respond to the Town's witnesses. Based on the terms of the Settlement Agreement, we have to question the benefits of the Town's formal intervention. For example, one of the town's witnesses, Mr. Nitza, testified Petitioner's proposed rate would greatly exceed other water utilities in Allen County. Town's Ex. TTN at p 3. However, as aptly noted by Pioneer's expert, Mr. Miller, such a comparison is inappropriate because both the City of Fort Wayne and Utility Center, Inc. are utilities with annual revenues many multiple times greater than Petitioner and enjoy larger economies of scale, and at least with respect to Utility Center, has a parent entity that assists with its operations.<sup>2</sup> Pet.'s Ex. SAM-R at p. 10. Further, while Petitioner has held its rates steady since 1998, during this same period of time Utility Center Inc.'s rates have doubled and those of Fort Wayne have increased significantly. In addition, with respect to the studies proposed by the Town: the Water Master Plan, the Asset Management Plan, and the Water Conservation Plan, the Town's witness, Mr. Nitza, was unable to identify any utilities with fewer than 2,500 customers which had commissioned all three (3) plans or which had been ordered to do so. Town's Docket Entry Response, November 6, 2013. And, in fact, Mr. Liechty testified at the hearing that all three (3) plans would cost approximately \$25,000 if performed as recommended by the Town, an estimate, which if proven accurate, would absorb nearly one third (1/3) of the three-year increase which the Parties agreed was just and reasonable, but the cost of which was not included in the Settlement Agreement. We urge Petitioner and the Town to work together to address these areas of concern in a less formal and less expensive process of scale and scope appropriate to Petitioner.

Dr. Sharma provided testimony concerning the utility's cost of equity, which Pioneer was required to address by retaining its own expert. Ms. Ahern, Petitioner's expert correctly identified serious flaws in the methods used by Dr. Sharma. We note Dr. Sharma's 6.44% cost of equity

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<sup>1</sup> We note that the rate case expense does not include the amount the Town incurred to hire its attorney and two witnesses, which will be paid by the Town's taxpayers, all of whom are also customers of the utility.

<sup>2</sup> Utility Center Inc.'s rates were increased: 1) in Cause No. 41968 by Order dated 1/10/03, 13.4 % for water and 17.40 % for Sewer; 2) in Cause No. 43331 by Order dated 8/27/08, 75% (2-Phase) for water and 75% (2-phase) for Sewer; and 3) in Cause No. 43875 by Order dated 4/13/11, 7.18 % for water and 8.36% for sewer. Fort Wayne's rates were increased: a) in Cause No. 41925 by Order dated 6/6/01, 13.2% for water; b) in Cause No. 42979 by Order dated 8/23/06, 25% for water and 15% for water for the City of New Haven; and c) in Cause No 44162 by Order dated 10/17/12, 33.86 % (3-phase).

recommendation is more than 400 basis points lower than the 10.5% cost of equity agreed to in the Settlement Agreement. Dr. Sharma's recommended amount is far lower than any cost of equity recommended before this Commission in at least a decade.

A comparison of the net operating income requirement proposed by the Parties with the amount agreed upon in the Settlement Agreement further demonstrates our concern with the cost and benefits of the Town's formal intervention. Specifically, a comparison of the net operating income proposed by the OUCC in the amount of \$40,485 with the amount agreed upon in Settlement Agreement of \$40,740 reflects the fact that the small utility process would likely have produced a similar result had the parties simply allowed the small utility procedure to run its course. It is unfortunate that there have been extensive cost run-ups for such a small dollar amount difference.

Notwithstanding the above, we find that the Settlement Agreement correctly reflects the Parties' initial positions and accurately portrays the positions the Parties have negotiated in this matter. Each of the factors relevant to the agreed-to increase in annual operating revenue amount generated by Petitioner's monthly recurring rates and charges was addressed by the Parties in their respective testimony and exhibits, or in the Settlement Agreement and its exhibits. After reviewing the evidence, we find that the Settlement Agreement, with the two modifications discussed further below and the additional requirements set forth in Finding Paragraph 5.B, provides a reasonable resolution of the issues in this Cause and is in the public interest. Approval of the Settlement Agreement also eliminates the risks, uncertainty and consumption of time and resources of the Parties and the Commission that would otherwise be required in a fully litigated proceeding.

The two modifications to the Settlement Agreement relate to the Parties' agreement concerning the Petitioner's establishment of a restricted account for tank painting and maintenance and that Petitioner file a general rate case in three years. With regard to the establishment of a separate restricted account to hold funds collected through rates and charges for tank painting and maintenance, we find that Pioneer shall ensure that it establishes an interest bearing account that produces a prudent return which does not jeopardize its principal.

With regard to the Parties' agreement that Petitioner file a general rate case in three (3) years, we note that Petitioner is eligible to participate in the Commission's Alternative Regulatory Procedures for Small Utilities ("Small Utility ARP") established in the Commission's March 14, 2013 Order in Cause No. 44203. The Small Utility ARP allows a utility to obtain controlled annual rate increases over a five year period. It was intended to provide a less costly regulatory procedure than a full rate case and designed to foster improvements in the financial, managerial and technical operations of a utility. As such, we find that Pioneer should have the option to participate in the Small Utility ARP in lieu of having to file for a general rate case in three (3) years. We urge Petitioner to consult informally with Town officials to identify those improvements to be addressed should Petitioner elect this option. If Pioneer elects to participate in the Small Utility ARP, the eligible operating expenses and Taxes Other Than Income to which the Annual Cost Index will be applied are \$149,100 and \$6,114, respectively. All other components of the revenue requirement will remain unchanged except in years four and five, when operating expenses shall be reduced by \$14,067 related to rate case expense amortization.

Finally, we note that in responding to the Town's evidence, Pioneer retained an expert, William L.G. Etzler, who testified that Petitioner is a well run utility with an impressive list of improvements, especially considering that Petitioner has had no rate increase since it began its operation in 1998. Pet.'s Ex. WLGE-R at pp. 3-5. Based on the evidence presented, we agree. In difficult times, Petitioner brings to the Town assets that many struggling small towns would give their right arm to enjoy. While Petitioner may not be perfect in each and every aspect, the Town should recognize Pioneer for the asset it is to the economic vitality of its community. We encourage Petitioner and the Town to continue building upon the cooperative relationship that appears to have emerged by the end of this proceeding.

**B. Other Matters.** Several issues were addressed with Petitioner through the Presiding Officer's November 1, 2013 Docket Entry ("Docket Entry"), but were not addressed by the Parties in the Settlement Agreement.

1) **Affiliate Agreements.** Mr. Liechty, in his rebuttal testimony, stated Petitioner and Liechty Management intend to enter into a new affiliate contract that specifically identifies the services provided by Liechty Management. When asked whether Petitioner intends to complete this action and file that contract pursuant to Ind. Code § 8-1-2-49(2)(g), Mr. Liechty responded that Pioneer did intend to enter into a new contract and would file it pursuant to the Commission's requirements governing affiliate agreements. Accordingly, we find that Petitioner and Liechty Management shall execute a new affiliate contract that clearly outlines the services provided to Petitioner and file that contract with the Commission pursuant to Ind. Code § 8-1-2-49(2)(g) within 60 days from the date of this Order.

2) **Accounting Records.** Pioneer was asked in the Docket Entry to address the fact that its Balance Sheet does not reflect any Contributions in Aid of Construction ("CIAC"). In its November 6, 2013 Response ("Response"), Pioneer indicated that it was not recording either the value of the assets paid for and contributed by developers or the off-setting CIAC associated with the assets. Pursuant to 170 IAC 6-2-2, Pioneer is required to record CIAC on its books and records consistent with the requirements of the Uniform System of Accounts ("USoA"). Therefore, Petitioner shall immediately begin complying with the USoA and properly record CIAC.

3) **Approval for Debt Issuance.** Pioneer was also asked in the Docket Entry to address the fact that Schedule 8 of its Amended Application reflects Long-Term Debt of \$228,422 for which Petitioner did not receive Commission approval as required by Ind. Code § 8-1-2-79. In its Response, Pioneer explained it was unaware of the requirement to obtain Commission approval to enter into long-term debt, but indicated that it would obtain approval prior to issuing long-term debt in the future. Accordingly, we fully expect Pioneer to seek and obtain Commission approval prior to issuing long-term debt in the future pursuant to Ind. Code § 8-1-2-79.

4) **Customer Service.** Pioneer indicated in its Response that the only steps it took to notify its customers of its filing in this Cause for a rate increase were those required by the Commission's rules at 170 IAC 6-1.5. As indicated above, we believe that had Petitioner been more active and open in its communications with its customers, much of the expense incurred in this Cause may have been avoided. The lack of customer communication and interaction is also reflected by several of the comments made by customers at the July 11, 2013 Field Hearing held in

Leo-Cedarville, which Petitioner indicated it had not been previously informed about, and in the fact that except for the chance of possible acquisition of the utility by the Town, few formal or informal conversations were attempted between Petitioner and Town officials. Consequently, we strongly encourage Petitioner to increase its communications and opportunities for dialogue with customers and with the Town, both in writing and through public meetings, particularly when it is considering changes in operations that may impact the quality of service or its rates.

Additionally, while we understand Petitioner’s decision to utilize dedicated office space in the Liechty home to serve as Pioneer’s principal office because it is cost-effective and efficient to do so based upon the size of the utility, we also recognize that several customers expressed discomfort with approaching a personal residence to conduct their utility business. As an alternative to meeting with customers at Pioneer’s office in the Liechty home, we urge Petitioner to consider hosting regular utility office hours at an alternate location or making itself available at a local public venue.

**C. Conclusion.** As a result of the Commission’s approval of the Settlement Agreement, Petitioner’s annual operating income will be increased by 16.71% in order to provide it with an opportunity to earn additional revenue of \$29,844 calculated as follows:

Rate Base	\$527,037
Times: Effective Rate of Return	7.73%
Resulting Net Operating Income	\$40,740
Less: NOI Under Present Rates	\$11,418
Additional NOI Required	\$29,322
Gross Revenue Conversion Factor	101.78%
Revenue Increase	\$29,844

**D. Effect of Settlement Agreement.** 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, 1997 Ind. PUC LEXIS 459, at \*19-22 (IURC March 19, 1997).

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

1. The Settlement Agreement, a copy of which is attached to this Order, is approved as modified herein.
2. Pioneer is authorized to increase its monthly recurring rates and charges by 16.71% so as to produce additional revenue of \$29,844 and, together with other revenues, total annual operating revenues of \$209,169.
3. Pioneer is authorized to implement the monthly recurring rates and charges, non-recurring charges, fees and other terms set forth in Joint Settlement Exhibit 2.

4. Prior to placing into effect the rates and charges approved herein, Pioneer shall file a schedule of rates and charges for the purpose of accomplishing the findings set forth above, with the Water/Sewer Division of the Commission. Such rates and charges for wastewater service will become effective upon approval thereof by the Water/Wastewater Division of the Commission and shall cancel all prior rates and charges.

5. Pioneer shall comply with the additional requirements set forth in Finding Paragraph 5.B.

6. If Pioneer Water, LLC elects to participate in the Small Utility ARP Program, the eligible operating expenses and Taxes Other Than Income to which the Annual Cost Index will be applied are \$149,100 and \$6,114, respectively. All other components of the revenue requirement will remain unchanged except in years four and five, when operating expenses shall be reduced by \$14,067 related to the three-year rate case expense amortization.

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

**ATTERHOLT, LANDIS, MAYS, AND ZIEGNER CONCUR:**

**APPROVED:      JAN 15 2014**

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

  
\_\_\_\_\_  
Brenda A. Howe  
Secretary to the Commission

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF )  
PIONEER WATER, LLC FOR A NEW ) CAUSE NO. 44309-U  
SCHEDULE OF RATES AND CHARGES )

JOINT STIPULATION AND AGREEMENT

On February 21, 2013, Pioneer Water, LLC (“Pioneer”) filed its application for an increase in its monthly recurring rates and charges, as well as for changes to its non-recurring charges, pursuant to the provisions of Indiana Code § 8-1-2-61.5 and 170 IAC 14-1. Pioneer also requested Commission approval for new Rules and Regulations. Pioneer subsequently amended its application and withdrew its request for approval of new Rules and Regulations and later modified its proposed increase to its monthly recurring rates and charges.

As amended, Pioneer’s application requested authority to increase its monthly recurring rates and charges on an across-the-board basis in two phases of 39.08% and 11.12%, respectively. These increases would generate additional revenue for Pioneer of \$64,343 in Phase I and \$25,455 in Phase II. Pioneer’s application, as amended, also requested approval to increase its existing Bad Check Charge and Reconnect/Disconnect Charge to \$24.95 and \$30.50, respectively, and establish a new Service Charge of \$30.50.

The OUCC recommended in its case-in-chief that the Commission authorize Pioneer to increase its rates and charges by 1.52% in a single phase in order to generate \$2,714 of additional operating revenue. The OUCC, however, expressed no objection to Pioneer’s proposed changes to its non-recurring charges, except to recommend that the

Bad Check Charge be rounded to \$25 and the Reconnect/Disconnect Charge and Service Charges be rounded to \$30.

The Town also disagreed with Pioneer's proposed rate increases in its case-in-chief and recommended to the Commission that in Phase I Pioneer's monthly recurring rates and charges be reduced by no less than 8.33% and increased in Phase II by no more than 15.66%. In testimony answering the OUCC's case-in-chief the Town revised its position and indicated that Pioneer's monthly recurring rates and charges should be decreased by 2.25%. The Town expressed no objection to Pioneer's proposed changes to its non-recurring charges.

In its rebuttal testimony, Pioneer agreed with most of the OUCC's accounting presentation and revised the relief it was seeking in this Cause. Pioneer proposed to increase its monthly recurring rates and charges by 23.35% in one phase, which would allow it an opportunity to earn additional revenue of \$41,693. Pioneer reiterated its request to increase its non-recurring Bad Check Charge and Reconnect/Disconnect Charge, as well as to implement a new Service Charge. Pioneer has not had an opportunity to respond to the Town's revised position.

The OUCC also recommended in its case-in-chief that the Commission require Pioneer to establish and report on a water monitoring program, to adopt certain operation and maintenance changes and establish and report on a restricted account for tank painting and maintenance funds. Similarly, the Town proposed that the Commission impose on Pioneer several requirements relating to conducting a cost of service study, development of a master plan, water conservation plan, asset management plan and customer service improvement plan, establishment of escrow accounts for tank painting

and depreciation funds and customer complaint reporting. In rebuttal, Pioneer accepted the OUCC's recommendations, but rejected the Town's several recommendations.

Following negotiations, Pioneer, the OUCC and the Town (collectively, the "Parties") reached an agreement with respect to all the issues before the Commission, including without limitation as follows:

1. Compliance with Regulatory Requirements. Pioneer is a public utility providing water utility service to fewer than 5,000 retail customers and does not serve another utility. Also, Pioneer is not a not-for-profit utility, conservancy district or municipal utility and, accordingly, the provisions of 170 IAC 14-1-2(a)(5) and (6) are not applicable to Pioneer's application, as amended. Pioneer is entitled to request an increase in its rates and charges for service pursuant to, and Pioneer's application, as amended, satisfies all of the requirements of, Indiana Code § 8-1-2-61.5 and 170 IAC 14-1.

2. Test Year. The period used by the Parties for determining Pioneer's revenues and expenses incurred in providing water utility service to its customers was the twelve months ended December 31, 2011. With adjustments for changes that are fixed, known and measurable, this test year is sufficiently representative of Pioneer's normal operations to provide reliable information for ratemaking purposes.

3. Rate Base. As shown on Joint Settlement Exhibit 1, the original cost depreciated value of Pioneer's utility properties used and useful for the convenience of the public as of December 31, 2011 is \$527,037 and, for purposes of this proceeding only, that amount also is the fair value of Pioneer's properties in service and used and useful for the convenience of the public as of December 31, 2011.

4. Allowed Return. A rate of return of 7.73% will adequately and fairly compensate Pioneer for its investments, while maintaining Pioneer's financial viability. As shown in Joint Settlement Exhibit 1, applying that rate of return to Pioneer's original cost rate base of \$527,037 would generate for Pioneer a fair return of \$40,740.

5. NOI at Present Rates. Pioneer's *pro forma* net operating income under its present rates, as shown in Joint Settlement Exhibit 1, is \$11,418. That amount is insufficient to provide a fair return on the fair value of its properties used and useful in providing water utility service for the convenience of the public, and is therefore unjust and unreasonable and should be increased.

6. Allowed Increase. As shown in Joint Settlement Exhibit 1, Pioneer's current monthly recurring rates and charges should be increased in a single phase so as to produce additional operating revenues of \$29,844 and, together with other sources of revenue, total *pro forma* operating revenues of \$209,169, representing a 16.71% increase in Pioneer's monthly recurring rates and charges. The amount of that proposed increase reflects the effect of the increased revenue on federal and state income taxes, Indiana gross receipts tax and the Commission's fee. Giving appropriate weight to the need for Pioneer to discharge its public duties and to earn a return commensurate with that earned by enterprises of corresponding risk, the Commission should find that rates and charges estimated to produce such operating revenues are just and fair and should allow Pioneer the opportunity to earn a reasonable return on its property dedicated to providing water utility service to the public.

7. New Schedule of Rates and Charges. A proposed schedule of rates and charges is set forth in Joint Settlement Exhibit 2. The Commission should find that the

monthly recurring rates and charges, non-recurring charges and other terms provided for in the proposed schedule attached as Joint Settlement Exhibit 2 are sufficient to produce the results described in Paragraph 6 above and are each otherwise fair, just, reasonable and non-discriminatory.

8. Additional Covenants.

A. Pioneer shall file a general rate case no later than three years from the date of the final order in this Cause, unless the OUCC approves of a delay in writing at least ninety days prior to the expiration of the three-year period.

B. Pioneer shall establish a separate restricted account to hold all funds collected through its monthly recurring rates and charges for tank painting and maintenance and provide information on activity in the account as part of its Annual Report to the Commission.

C. At the conclusion of a three-year period beginning with Pioneer's implementation of the monthly recurring rates and charges approved in this Cause, Pioneer shall file an amended tariff removing any costs associated with its rate case expense in this Cause from its base rates.

D. Pioneer shall establish a regular program of monitoring its water loss, locating leaks and submit separate water loss reports for the calendar years 2013 and 2014 as an attachment to the Annual Reports it files with the Commission for each of those years.

E. Pioneer shall complete the change out of its manual-read meters with remote-read meters within five years of the date of the final order in this Cause.

F. Pioneer shall implement a program of turning all valves on its facilities every three years.

G. Pioneer shall investigate what cost-effective steps it can take to further water conservation and encourage more efficient use of water by its customers, including without limitation adding a brief comment concerning efficient water usage its annual Customer Confidence Report and implementing where considered possible the water conservation measures that the Indiana Water Shortage Task Force has recommended water utilities consider.

H. Pioneer shall investigate within twelve months of the date of the final order in this Cause the possibility of having a comprehensive master plan prepared for its system and share the results of its investigation with the Town; provided, however, Pioneer shall have no obligation to have a comprehensive master plan actually prepared unless Pioneer first determines that incurring the costs associated with preparing such a plan would be prudent and such costs would be subject to recovery through the rates and charges collected from customers. Notwithstanding the foregoing, Pioneer shall provide the Town with such information about Pioneer as the Town may reasonably request for land use planning and economic development purposes, including without limitation information on system facilities and capabilities and the utility's assessment of the prospects of usage and customer growth.

9. Waiver of Hearing and Admission of Evidence. Each of the Parties stipulates to the admission into evidence of the testimony and exhibits filed by each of the other Parties and waive for itself any cross-examination of the other Parties'

respective witnesses. The Parties shall jointly sponsor this Settlement Agreement and Joint Settlement Exhibits 1 through 3 at any evidentiary hearing in this Cause.

10. Mutual Conditions on Settlement Agreement. Each of the Parties stipulates that the terms and conditions set forth in this 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 order in the form attached as Joint Settlement Exhibit 3 without modification or further condition, which may be unacceptable to either party. If the Commission does not approve this Settlement Agreement in its entirety and incorporate it into a final order as provided above, it shall be null and void and deemed withdrawn, unless otherwise agreed to in writing by the Parties. The Parties represent that there are no other agreements in existence between them relating to the matters covered by this Settlement Agreement.

11. Non-Precedential. As a condition precedent to the 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 Settlement Agreement or the final 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 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 Settlement Agreement is solely the result of compromise in the settlement process and except as

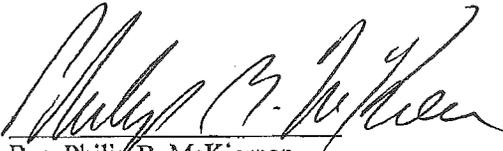
provided herein is without prejudice to and shall not constitute a waiver of any position that either of the Parties may take with respect to any or all of the items resolved herein in any future regulatory or other proceedings and, failing approval by the Commission, shall not be admissible in any subsequent proceedings.

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

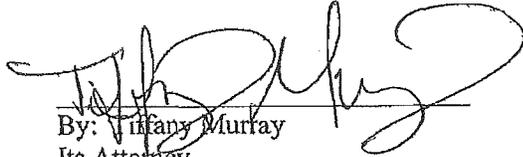
Respectfully submitted,

PIONEER WATER, LLC

INDIANA OFFICE OF UTILITY  
CONSUMER COUNSELOR

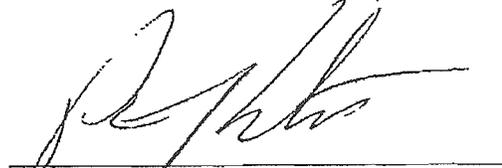


By: Philip B. McKiernan  
Its Attorney



By: Tiffany Murray  
Its Attorney

TOWN OF LEO-CEDARVILLE, INDIANA



By: Patrick L. Proctor  
Its Attorney

**PIONEER WATER, LLC**  
**Leo, Indiana**

**Comparison of OUCC's and Petitioner's Rebuttal  
Revenue Requirements**

	<u>Per OUCC</u>	<u>Per Petitioner Rebuttal</u>	<u>Proposed Settlement</u>	<u>Exh. Ref</u>
Original Cost rate Base	\$ 523,737	\$ 528,112	\$ 527,037	JSE1 pg 7
Times: Weighted Cost of Capital	7.73%	8.29%	7.73%	JSE1 pg 8
Net Operating Income Required for Return on Rate base	40,485	43,781	40,740	
Less: Adjusted Net Operating income	37,818	2,817	11,418	JSE1 pg 3
Net Revenue Requirement	2,667	40,964	29,322	
Gross Revenue Conversion Factor	101.7800%	101.7800%	101.7800%	
Recommended Revenue Increase	<u>\$ 2,714</u>	<u>\$ 41,693</u>	<u>\$ 29,844</u>	
Recommended Percentage Increase	<u>1.52%</u>	<u>23.35%</u>	<u>16.71%</u>	

<u>Current Rate for 5,000 Gallons</u>	<u>OUCC</u>	<u>Petitioner Rebuttal</u>	<u>Proposed Settlement</u>
Current Rate = \$35.00	\$ 35.53	\$ 43.17	\$ 40.85

**Gross Revenue Conversion Factor**

	<u>Per OUCC</u>	<u>Petitioner Rebuttal</u>	<u>Proposed Settlement</u>
Gross revenue Change	100.0000%	100.0000%	100.0000%
Less: Bad Debt Rate	0.2206%	0.2206%	0.2206%
Sub-total	99.7794%	99.7794%	99.7794%
Less: IURC Fee	0.1326954%	0.1326954%	0.1326954%
Income Before State Income taxes	99.646705%	99.646705%	99.646705%
Less: State Income Tax (8.5% of Line 5)	0.0000%	0.0000%	0.0000%
Utility Receipts Tax (1.4% of Line 3)	1.3969%	1.3969%	1.3969%
Income before Federal income Taxes	98.2498%	98.2498%	98.2498%
Less: Federal income Tax (15% of Line 8)	0.0000%	0.0000%	0.0000%
Change in Operating Income	<u>98.2498%</u>	<u>98.2498%</u>	<u>98.2498%</u>
Gross Revenue Conversion Factor	<u>101.7800%</u>	<u>101.7800%</u>	<u>101.7800%</u>

**PIONEER WATER, LLC**  
Leo, Indiana

**Reconciliation of Net Operation Income Statement Adjustments**  
*Pro-forma Present Rates*

	Per OUCC	Petitioner Rebuttal	Proposed Settlement
Operating Revenues			
Metered Residential Revenue	\$ 15,162	\$ 15,162	\$ 15,162
Metered Commercial Revenue	747	747	747
Penalties	-	-	-
Total Operating Revenues	<u>15,909</u>	<u>15,909</u>	<u>15,909</u>
O&M Expense			
Salary and Wage Expense	649	649	649
Purchase Power	85	85	85
Maintenance Expense	12,667	19,000	19,000
Management Contract	(15,000)	-	(6,000)
Non-Recurring or Capital Expenditures	(20,845)	(20,845)	(20,845)
Insurance Expense	(418)	(418)	(418)
Rate Case Expense	500	14,167	11,567
Postage Expense	78	78	78
IURC Fee	(53)	(53)	(53)
Disallowed Expense	(2,719)	(2,719)	(2,719)
Depreciation Expense	13,216	13,216	13,216
Taxes Other than Income:			
Payroll Tax	238	238	238
Property Tax	(80)	(79)	(79)
Utility Receipts Tax	1,192	1,192	1,192
State Income Tax	-	-	-
Federal Income Tax	-	-	-
Total Operating Expenses	<u>(10,490)</u>	<u>24,511</u>	<u>15,911</u>
Net Operating Income	<u>\$ 26,399</u>	<u>\$ (8,602)</u>	<u>\$ (2)</u>

PIONEER WATER, LLC  
Leo, Indiana

Pro-forma Net Operating Income Statement

	Year Ended Mon/Day/Yr	Adjustments	Exh. Ref	Pro-forma Present Rates	Adjustments	Exh. Ref	Pro-Forma Proposed Rates
<b>Operating Revenues</b>							
Metered Residential Revenue	\$ 152,359	\$ 12,941	OUCC 5-1	\$ 167,521	\$ 27,999	JSE1 pg 1	\$ 195,520
		2,221	OUCC 5-2				
Metered Commercial Revenue	9,348	794	OUCC 5-1	10,095	1,687	JSE1 pg 1	11,782
		(47)	OUCC 5-3				
Penalties	944	-		944	158	JSE1 pg 1	1,102
Other	765	-		765			765
Total Operating Revenues	<u>163,416</u>	<u>15,909</u>		<u>179,325</u>	<u>29,844</u>		<u>209,169</u>
<b>O&amp;M Expense</b>							
O&M Expense	147,290			148,634			148,674
Salary and Wage Expense		649	JSE1 pg 4				
Purchase Power		85	JSE1 pg 4				
Maintenance Expense		19,000	JSE1 pg 4				
Management Contract		(6,000)	JSE1 pg 6				
Non-Recurring or Capital Expenditures		(20,845)	JSE1 pg 4				
Insurance Expense		(418)	JSE1 pg 5				
Rate Case Expense		11,567	JSE1 pg 5				
Postage Expense		78	JSE1 pg 5				
IURC Fee		(53)	JSE1 pg 6		40	JSE1 pg 1	
Disallowed Expense		(2,719)	JSE1 pg 6				
Bad Debt Expense	360			360	66	JSE1 pg 1	426
Depreciation Expense	-	13,216	JSE1 pg 6	13,216			13,216
Amortization Expense	-			-			-
<b>Taxes Other than Income:</b>							
Payroll Tax	1,151	238	JSE1 pg 5	1,389			1,389
Property Tax	1,447	(79)	JSE1 pg 5	1,367			1,367
Other Taxes and Licenses	449	-		449	-		449
<b>Income Taxes:</b>							
State Income Tax	-	-		-	-	JSE1 pg 1	-
Federal Income Tax	-	-		-	-	JSE1 pg 1	-
Utility Receipts Tax	1,300	1,192	JSE1 pg 6	2,492	417	JSE1 pg 1	2,909
Total Operating Expenses	<u>151,997</u>	<u>15,911</u>		<u>167,907</u>	<u>523</u>		<u>168,430</u>
Net Operating Income	<u>\$ 11,419</u>	<u>\$ (2)</u>		<u>\$ 11,418</u>	<u>\$ 29,321</u>		<u>\$ 40,739</u>

PIONEER WATER, LLC  
Leo, Indiana

(Cont'd)

Expense Adjustments

Adjustment - (1) Salary and Wage Expense

To adjust test year salaries and wages to reflect any *pro forma* changes in wages and hours worked during the test year.

Employee	Proposed Hours	Proposed Rate	Proposed Overtime Rate	Total
Tresha Dowdy	790	\$ 10.50	\$ 15.75	\$ 8,292
General Labor	191	11.55	17.33	2,206
General Labor	248	12.60	18.90	3,125
				<u>13,623</u>
				Less: Test Year Expense
				<u>(12,974)</u>
				Adjustment Increase (Decrease)
				<u>\$ 649</u>

Adjustment - (2) Purchase Power

To adjust power cost for the increase/decrease in number of customers that occurred during the test year.

Test Year Purchased Power Expense	\$ 6,694
Divided by: Number of Test Year Bills	<u>4,906</u>
Cost Per Bill	1.36
Times: Number of Additional Bills	<u>62</u>
Adjustment Increase (Decrease)	<u>\$ 85</u>

Adjustment - (3) Maintenance Expense

To adjust test year maintenance expense to reflect the utility's average annual cost associated with system maintenance.

Water Tank Painting (\$190,000 every 15 years)	\$ 190,000
	<u>10</u>
	\$ 19,000
Less: Test Year Expense	<u>0</u>
Adjustment Increase (Decrease)	<u>\$ 19,000</u>

Adjustment - (4) Non-Recurring or Capital Expenditures

To remove from test year operating costs that either will not recur in the future or were inadvertently recorded as expenses but should have been recorded as utility plant in service.

Tractor Supply Co	Lawn Mower	\$ (5,500)
EJP	Hand-held Meter Reader	(3,500)
EJP	Meters	<u>(6,850)</u>
	Total Capital Items	(15,850)
Norman Noe Co.	Tank Painting Specifications	(3,995)
Kelly Buick	Car	<u>(1,000)</u>
	Adjustment Increase (Decrease)	<u>\$ (20,845)</u>

PIONEER WATER, LLC  
Leo, Indiana

(Cont'd)

Expense Adjustments

Adjustment - (5) Insurance Expense

To adjust test year insurance expense to reflect any changes in insurance premiums.

<i>Pro forma</i> Insurance Expense	\$ 3,449
Less: Test Year Expense	<u>(3,867)</u>
Adjustment Increase (Decrease)	<u>\$ (418)</u>

Adjustment - (6) Rate Case Expense

To adjust test year operating expenses to include costs associated with this rate case amortized over the expected life of its proposed rates.

Pro forma rate case expense	\$ 42,200
Divided By: Expected Life of Rates	<u>3</u>
<i>Pro forma</i> Test Year Rate Case Expense	14,067
Less: Test Year Expense	<u>(2,500)</u>
Adjustment Increase (Decrease)	<u>\$ 11,567</u>

Adjustment - (7) Payroll Taxes

To adjust test year payroll taxes to reflect *pro forma* adjustments.

Pro-forma Payroll	\$ 13,623
Times: FICA Rate	<u>7.65%</u>
<i>Pro forma</i> FICA Expense	1,042
Less: Test Year Expense	<u>(804)</u>
Adjustment Increase (Decrease)	<u>\$ 238</u>

Adjustment - (8) Postage Expense

To adjust test year postage expense to reflect the increase in test year number of customers.

Number of Additional Bills	62
Current Postage Rate	<u>\$ 0.46</u>
	\$ 29
Number of Test Year Bills	4,906
Times: Increase in Postage Rate (\$.46 - \$.45)	<u>\$ 0.01</u>
	49
Adjustment Increase (Decrease)	<u>\$ 78</u>

Adjustment - (9) Property Taxes

To adjust test year property tax expense to reflect current or *pro forma* property taxes.

Description	Assessed Value	Tax Rate	Tax
Pioneer Water	\$ 66,300	2.0626%	\$ 1,368
			<u>(1,447)</u>
			<u>\$ (79)</u>

**PIONEER WATER, LLC**  
**Leo, Indiana**

(Cont'd)

**Expense Adjustments**

**Adjustment - (10) Indiana Utility Regulatory Commission (IURC) Fee**

To adjust test year IURC fee for proposed operating revenues.

Total Operating Revenues	\$ 179,325
Times: Current IURC Fee	0.001329888
	<u>238</u>
Less: Test Year Expense	<u>(291)</u>
<b>Adjustment Increase (Decrease)</b>	<b>\$ (53)</b>

**Adjustment - (11)**  
**Utility Receipts Tax**

To adjust Utility Receipts Taxes to *pro forma* present rate amount.

Operating Revenues	\$ 179,325
Less: Bad Debt Expense	(360)
Exemption	<u>(1,000)</u>
Operating Revenues Subject to Utility Receipts Tax	177,965
Rate	1.4%
Utility Receipts Tax	<u>\$ 2,492</u>

**Adjustment - (12) Management Contract**

To reflect an adjustment in the Management Contract Fee

New Management Contract	\$ 42,000
Less: Old Management Contract	<u>\$ (48,000)</u>
<b>Adjustment Increase (Decrease)</b>	<b>\$ (6,000)</b>

**Adjustment - (13) Depreciation Expense**

To adjust test year to reflect *pro forma* a Depreciation expense.

Utility Plant in Service	\$ 660,787
Times Composite Depreciation Rate	<u>2.00%</u>
<i>Pro forma</i> a Depreciation Expense	13,216
Less: Test Year Expense	<u>0</u>
<b>Adjustment Increase (Decrease)</b>	<b>\$ 13,216</b>

**Adjustment - (14) Disallowed Expense**

To reflect disallowed or capitalized expenses.

Advertising Expense	\$ (705)
Business Gifts	(1,236)
Contributions	(378)
Deposits recorded as expense	<u>(400)</u>
<b>Adjustment Increase (Decrease)</b>	<b>\$ (2,719)</b>

PIONEER WATER, LLC  
Leo, Indiana

Calculation of Rate Base

		<u>Per Proposed Settlement</u>
Utility Plant in Service at	12/31/11	\$ 670,768
Add: Tank Painting		-
Capitalized Item (See Adjustment SAM R3-4)		15,850
Less: Unsupported UPIS		<u>(25,831)</u>
Gross Utility Plant in Service		660,787
Less: Accumulated Depreciation		<u>(151,482)</u>
Net Utility Plant in Service		509,305
Add: Working Capital (see below)		<u>17,732</u>
Total Original Cost Rate Base		<u><u>\$ 527,037</u></u>

Working Capital Calculation

Operation & Maintenance Expense	\$ 148,634
Less: Utilities	<u>(6,779)</u>
Adjusted Operation & Maintenance Expense	141,855
Times: 45 Day Factor	<u>0.125</u>
Working Capital Requirement	<u><u>\$ 17,732</u></u>

**PIONEER WATER, LLC**  
**Leo, Indiana**

*Pro forma* Capital Structure  
As of December 31, 2011

	<b>Amount</b>	<b>Percent of Total</b>	<b>Cost</b>	<b>Weighted Cost</b>
Common Equity	\$ 296,226	56.46%	10.50%	5.93%
Long Term Debt	<u>228,422</u>	<u>43.54%</u>	4.13%	<u>1.80%</u>
Total	<u>\$ 524,648</u>	100.00%		<u>7.73%</u>

**PIONEER WATER, LLC**  
**Leo, Indiana**

Current and Proposed Rates and Charges

	<u>Current</u>	<u>OUCC Proposed</u>	<u>Petitioner Rebuttal Proposed</u>	<u>Proposed Settlement</u>
<b><u>Metered Rates Per Month</u></b>				
0-1,999 (Minimum)	\$25.00	\$25.38	\$30.84	\$29.18
2,000 to 2,999	27.50	27.92	33.92	32.10
3,000 to 3,999	30.00	30.46	37.00	35.01
4,000 to 4,999	32.50	32.99	40.09	37.93
5,000 to 5,999	35.00	35.53	43.17	40.85
6,000 to 6,999	37.50	38.07	46.26	43.77
7,000 to 7,999	40.00	40.61	49.34	46.69
8,000 to 8,999	42.50	43.15	52.42	49.60
9,000 and above	2.50	2.54	3.08	2.92
<b><u>Service Charge</u></b>				
5/8 inch meter (1,999 gals.)	\$25.00	\$25.38	\$30.84	\$29.18
3/4 inch meter (1,999 gals.)	25.00	25.38	30.84	29.18
1 inch meter (1,999 gals)	25.00	25.38	30.84	29.18
<b><u>Non-Recurring Charges</u></b>				
Bad Check Charge	\$10.00	\$25.00	\$25.00	\$25.00
Reconnect/Disconnect Charge	25.00	30.00	30.00	30.00
Service Charge	0.00	30.00	30.00	30.00

PIONEER WATER, L.L.C.  
 9601 Pioneer Trail  
 Leo, Indiana 46765

SCHEDULE OF WATER RATES AND CHARGES

1. Metered Consumption

For use of and service rendered by the waterworks system of the Corporation, based on the use of water supplied by said system:

<u>Consumption per Month</u> (Gallons)	<u>Rate/Month</u>
0 to 1,999 (Minimum)	\$29.18
2,000 to 2,999	32.10
3,000 to 3,999	35.01
4,000 to 4,999	37.93
5,000 to 5,999	40.85
6,000 to 6,999	43.77
7,000 to 7,999	46.69
8,000 to 8,999	49.60
9,000 and above	\$2.92 / 1,000 gal

2. Minimum Charge

Each user shall pay a minimum charge in accordance with the following applicable size meter installed, for which the user will be entitled to the quantity of water set out in the above schedule of rates.

<u>Meter Size</u>	<u>Gallons Allowed</u>	<u>Minimum Charge</u>
5/8 inch meter	1,999	\$29.18
3/4 inch meter	1,999	29.18
1 inch meter	1,999	29.18

3. Delinquencies

All bills for water services not paid by the due date indicated on the bill shall be charged a one-time collection or deferred payment charge of ten percent (10%) on the current delinquent charges.

PIONEER WATER, L.L.C.  
9601 Pioneer Trail  
Leo, Indiana 46765

SCHEDULE OF WATER RATES AND CHARGES

4. Meter Installation Charge \$265.00

Each user at the time of connection with the water utility shall pay a charge to cover the costs associated with purchasing the meter, installing the meter, and tapping the main. The charge for any installation of a meter larger than a 5/8 inch shall be the actual cost of the meter and installation but not less than \$265.00.

5. Reconnect/Disconnect Charge \$30.00

When the service is turned off for non-payment of a bill, or whenever for any reason beyond the control of the water utility a re-establishment of service is required by any customer, this charge will be made by the water utility to cover the cost of discontinuance and re-establishment of service. The charge, together with any arrears due to the water utility, shall be paid by the customer before service will be re-established.

6. Returned Checks \$25.00

7. Service Charge \$30.00

Any time that Utility personnel conduct an investigation into water service issues at a customer's property they will be charged the Service Charge of \$30.00.

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF	)	CAUSE NO. 44309-U
PIONEER WATER, LLC FOR A NEW	)	
SCHEDULE OF RATES AND CHARGES	)	APPROVED: _____

BY THE COMMISSION

Larry Landis, Commissioner  
Marya E. Jones, Administrative Law Judge

On February 21, 2013, Pioneer Water, LLC, (“Pioneer”) filed its application to modify its monthly recurring and non-recurring rates and charges pursuant to the provisions of Indiana Code § 8-1-2-61.5 and 170 IAC 14-1. Pioneer also requested authority to implement new Rules and Regulations for service, but subsequently withdrew that request on March 1, 2013.

On May 23, 2013 the Town of Leo-Cedarville, Indiana (“Town”) requested leave to intervene as a party in this Cause. Neither Pioneer nor the Indiana Office of Utility Consumer Counselor (“OUCC”) opposed the intervention and, by a docket entry dated June 13, 2013, the Town’s request to intervene was granted.

The Commission received several communications expressing opposition to the increase in rates and charges requested by Pioneer. Accordingly, pursuant to notice given as provided by law, proof of which was incorporated into the record by reference and placed in the official files of the Commission, the Commission conducted on July 11, 2013, a field hearing in Cedarville Park Pavilion, 9825 St. Joseph Street, Leo, Indiana, beginning at 6:00 p.m. Approximately 34 persons were in attendance and approximately 9 provided oral or written comments.

Based on the input received from the public, the Commission determined that it should conduct a formal public hearing in this Cause and, on August 2, 2013, the Presiding Officers entered a docket entry establishing a procedural schedule addressing the submission of evidence

and other matters that had been agreed upon by the parties. The Presiding Officer's docket entry also established October 29, 2013, as the date it would conduct a formal public hearing in this Cause.

As allowed by 170 IAC 14-1-5(d), Pioneer elected to designate its application, as amended on July 10, 2013, to serve as its pre-filed evidence constituting its case-in-chief. Pursuant to the August 2, 2013, docket entry, the OUCC and Town filed the testimony and exhibits constituting their respective cases-in-chief on August 15, 2013. Pioneer filed the testimony and exhibits constituting its rebuttal case on October 3, 2013. The Town filed on that same day its cross-answering to the OUCC's case-in-chief.

On October 18, 2013, Pioneer filed its *Motion to Conduct Settlement Hearing* informing the Commission that the parties had reached a settlement in principle resolving all issues in this Cause and requesting that the scheduled October 29, 2013 evidentiary hearing be used to conduct a settlement hearing. Pioneer also stated, however, that the parties' settlement-related documentation would not be filed with the Commission within five days of the hearing. By a Docket Entry dated October 21, 2013, the Presiding Officers determined that an attorneys' conference should be conducted on October 29, 2013 and the parties should file their settlement-related documentation at or before the conference. The Presiding Officers also directed that the evidentiary hearing would be continued to a date to be determined at the attorneys' conference. On October 28, 2013, the parties filed their Joint Stipulation and Settlement Agreement, including Joint Settlement Exhibits 1 through 3, (the "Settlement Agreement"), and testimony in support of it.

Pursuant to notice given as provided by law, proof of which was incorporated into the record by reference and placed in the official files of the Commission, a public hearing was

commenced and the record opened on \_\_\_\_\_, 2013 at \_\_\_ EST, in IURC Conference Center, Suite 220, Judicial Courtroom 224 of the PNC Center, 101 W. Washington Street, Indianapolis, Indiana 46204. Pioneer, OUCC, and the Town appeared and participated at the hearing, but no member of the general public appeared or participated in the evidentiary hearing. The testimony and exhibits constituting Pioneer's, OUCC's and the Town's respective cases-in-chief, as well as the testimony and exhibits constituting Pioneer's rebuttal case and the Town's cross-answer, were made part of the record of this Cause without objection. The Commission also received into the record the Settlement Agreement and testimony supporting it.

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

1. **Statutory Notice and Commission Jurisdiction.** The information presented in this Cause establishes that legal notice of the filing of Pioneer's application was published in accordance with law and that Pioneer gave proper notice to its customers of the nature and extent of the relief it is seeking. Therefore, due legal and timely notice of the matters in this proceeding was given and published as required by law. Further, as that same information and the parties' Settlement Agreement show, Pioneer is an Indiana public utility, not a not-for-profit utility, conservancy district or municipal utility. Pioneer primarily provides water utility service to fewer than 5,000 retail customers and does not extensively serve another utility. Accordingly, the provisions of 170 IAC 14-1-2(a)(5) and (6) are not applicable to Pioneer's application, as amended, and Pioneer is entitled to request an increase in its rates and charges for service pursuant to Indiana Code 8-1-2-61.5 and 170 IAC 14-1.

Pioneer's application, as amended, satisfies all of the requirements of Indiana Code 8-1-2-61.5 and 170 IAC 14-1. The Commission, therefore, has jurisdiction over the parties and

subject matter of this case.

2. **Petitioner's Characteristics.** Pioneer is an Indiana limited liability company formed in 1997 to acquire the assets of Pioneer Village Water, Inc. ("PVW"), which was an Indiana non-profit corporation established for the purpose of providing water utility service to residents in and around the Pioneer Village Subdivision located in Cedar Creek Township of Allen County, Indiana. The Commission approved the transfer of PVW's assets to Pioneer in its August 26, 1998 Order in Cause No. 41089.

As of September 1, 2013, Pioneer provided water utility service to 423 customers -- 404 residential customers and 19 commercial customers. Pioneer also provides irrigation and private fire protection services to a small number of its customers. Most of Pioneer's customers are located in or around three residential subdivisions -- Pioneer Village, Metea Valley and Lions Gate. The facilities Pioneer uses to serve its customers include three supply wells, a 200,000 gallon storage tank, a treatment plant and a distribution system with 12,900 feet of 6-inch line, 5,000 of 8-inch line and 7,500 feet of 10 and 12-inch lines. During 2012, Pioneer sold in excess of 39,000,000 gallons of water to its customers.

Pioneer's current rates and charges are the same rates and charges as were in effect when it acquired PVW's assets in 1998. The Commission authorized Pioneer to continue collecting those rates and charges in its August 26, 1998 Order in Cause No. 41089.

3. **Positions of the Parties.**

A. **Pioneer's Case-in-Chief.** Pioneer's application, as amended, requested authority to increase its monthly recurring rates and charges on an across-the-board basis in two phases of 39.08% and 11.12%, respectively. These increases would provide Pioneer with the opportunity to earn additional revenue of \$64,343 in Phase I and \$25,455 in Phase II. Pioneer proposed these

increases in order to generate funds needed to address operating and maintenance expenses, as well as debt it proposed to incur in order to repair and paint its water storage tower. Pioneer's application, as amended, also requested approval to increase its existing Bad Check Charge and Reconnect/Disconnect Charge to \$24.95 and \$30.50, respectively, and establish a new Service Charge of \$30.50.

B. **OUCC Case-in-Chief.** The OUCC recommended in its report and testimony filed as its case-in-chief that the Commission authorize Pioneer to increase its rates and charges by 1.52% in a single phase in order to generate \$2,714 of additional revenue. The OUCC expressed no objection to Pioneer's proposed changes to its non-recurring charges, except to recommend that the Bad Check Charge be rounded to \$25 and both the Reconnect/Disconnect Charge and Service Charge be rounded to \$30.

In reaching its recommendation on an increase to Pioneer's monthly recurring rates and charges, the OUCC disagreed with several adjustments Pioneer made to its test year revenues and expenses in the course of determining *pro forma* net operating income. Specifically, the OUCC disagreed with, and proposed different adjustments to Pioneer's proposed test year revenues, as well as to Pioneer's test year operating and maintenance expenses for tank painting, management fees, rate case expense, postage expense, and the IURC fee. The OUCC also proposed adjustments to Pioneer's test year operating and maintenance expenses to remove certain non-recurring expenses, capital items, and disallowed expenses. The OUCC adjusted Pioneer's proposed depreciation expense and tax expenses.

The OUCC's recommended rate increase also reflects its disagreement with Pioneer's proposed rate base and weighted cost of capital. The OUCC adjusted Pioneer's proposed rate base to remove tank painting and other expenses inappropriate for inclusion in rate base and

added capital expenses incorrectly recorded as operation and maintenance expenses. The OUCC also proposed adjustments to Pioneer's calculation of accumulated depreciation and working capital. Regarding weighted cost of capital, the OUCC agreed with the capital structure and long term debt used by Pioneer, but disagreed with Pioneer's cost of capital.

The OUCC also recommended in its case-in-chief that the Commission require Pioneer to establish and report on a water monitoring program and to adopt certain operation and maintenance changes. The OUCC recommended that the Commission require Pioneer to establish and report on a restricted account for tank painting and maintenance funds.

C. Town's Case-in-Chief and Cross-Answering Testimony. The Town's testimony also disagreed with Pioneer's proposed rate increases. Based on certain proposed adjustments to Pioneer's operating and maintenance expenses, rate base and its cost of capital, the Town recommended to the Commission that in Phase I Pioneer's rates and charges be reduced by no less than 8.33% and increased in Phase II by no more than 15.66%. The Town also proposed that the Commission impose on Pioneer several requirements relating to conducting a cost of service study, development of a master plan, water conservation plan, asset management plan and customer service improvement plan, establishment of escrow accounts for tank painting and depreciation funds and customer complaint reporting. The Town expressed no disagreement with the changes Pioneer proposed to make to its non-recurring charges.

In its Cross Answer to the testimony of the OUCC's case-in-chief, the Town agreed with the OUCC's method of a single rate adjustment rather than the bifurcated adjustment used by Pioneer and by the Town in its original Testimony. The Town also agrees with several of the adjustments proposed by the OUCC to Pioneer's proposed test year revenues and expenses. Noting that the OUCC had relied on valid information that was not previously shared with the

Town, the Town specifically agreed with the OUCC's proposals regarding operating and maintenance expenses for tank painting, management fees, rate case expenses, postage expense and the IURC fee as well as the proposed removal of certain non-recurring expenses, capital items and disallowed expenses and the OUCC's proposed adjustment to Pioneer's depreciation expense and tax expenses.

The Town agreed with the removal of the tank painting expense for inclusion in the rate base, but rather including the expense as a capital expense. The Town also disagreed with Pioneer's cost of capital and offered evidence supporting a revised cost of capital. Thus, the Town revised its position and indicated that utilizing a one-time rate adjustment, Pioneer's monthly recurring rates and charges should be decreased by 2.25%. The Town expressed no objection to Pioneer's proposed changes to its non-recurring.

D. **Pioneer's Rebuttal Case.** In rebuttal, Pioneer accepted the OUCC's recommendations that it establish and report on a water monitoring program, to adopt certain operation and maintenance changes and establish and report on a restricted account for tank painting and maintenance funds. Pioneer also agreed with the OUCC's revenue adjustments, as well as with most of the adjustments the OUCC made to Pioneer's test year operation and maintenance expenses. Pioneer disagreed with the OUCC's proposed reduction to Pioneer's management fees, the amount and amortization period used by the OUCC to calculate Pioneer's rate case expense and the amortization period used by the OUCC to calculate tank painting expenses. Pioneer also disagreed with the provision made by the OUCC for working capital and the cost of common equity rate used by the OUCC to calculate Pioneer's weighted cost of capital. Based on the adjustments made by the OUCC with which Pioneer agreed and reflecting those matters where disagreement continued, Pioneer proposed that the Commission authorize it

to raise on an across-the-board basis its monthly recurring rates and charges by 23.35% in a single phase. This would allow it the opportunity to earn \$41,693 in additional revenue.

In rebuttal to the Town's case-in-chief, Pioneer presented testimony addressing and rebutting all of the matters raised by the Town, especially its several recommendations for additional studies, plans and escrow accounts. Pioneer's rebuttal testimony also addressed and rebutted the various matters underlying the Town's proposed changes to Pioneer's monthly recurring rates and charges.

4. **Settlement Agreement.** The Settlement Agreement recites that it addresses all of the issues before the Commission in this Cause, including the following:

A. **Compliance with Regulatory Requirements.** Pioneer is a public utility providing water utility service to fewer than 5,000 retail customers and does not extensively serve another utility. Also, Pioneer is not a not-for-profit utility, conservancy district or municipal utility and, accordingly, the provisions of 170 IAC 14-1-2(a)(5) and (6) are not applicable to Pioneer's application, as amended. Pioneer is entitled to request an increase in its rates and charges for service pursuant to, and Pioneer's application, as amended, satisfies all of the requirements of, Indiana Code § 8-1-2-61.5 and 170 IAC 14-1.

B. **Test Year.** The period used by the parties for determining Pioneer's revenues and expenses incurred in providing water utility service to its customers was the twelve months ended December 31, 2011. The Parties agree that, with adjustments for changes that are fixed, known and measurable, this test year is sufficiently representative of Pioneer's normal operations to provide reliable information for ratemaking purposes.

C. **Rate Base and Allowed Return.** As shown on Joint Settlement Exhibit 1, the parties agree that the original cost depreciated value of Pioneer's utility properties used and

useful for the convenience of the public as of December 31, 2011 is \$527,037 and, for purposes of this proceeding only, that amount also is the fair value of Pioneer's properties in service and used and useful for the convenience of the public as of December 31, 2011. Further, the parties agree that a rate of return of 7.73% will adequately and fairly compensate Pioneer for its investments, while maintaining Pioneer's financial viability. As shown in Joint Settlement Exhibit 1, applying that rate of return to Pioneer's original cost rate base of \$527,037 would generate for Pioneer a fair return of \$40,740.

D. **NOI at Present Rates.** Pioneer's pro forma net operating income under its present rates, as shown in Joint Settlement Exhibit 1, is \$11,418. The parties agree that amount is insufficient to provide a fair return on the fair value of its properties used and useful in providing water utility service for the convenience of the public, and is therefore unjust and unreasonable and should be increased.

E. **Allowed Increase.** As shown in Joint Settlement Exhibit 1, the parties agree that Pioneer's current monthly recurring rates and charges should be increased in a single phase so as to produce additional operating revenues of \$29,844 and, together with other revenue, total pro forma operating revenues of \$209,169, representing a 16.71% increase. The amount of that proposed increase reflects the effect of the increased revenue on federal and state income taxes, Indiana gross receipts tax and the Commission's fee. Giving appropriate weight to the need for Pioneer to discharge its public duties and to earn a return commensurate with that earned by enterprises of corresponding risk, the parties recommend that the Commission should find that rates and charges estimated to produce such operating revenues are just and fair and should allow Pioneer the opportunity to earn a reasonable return on its property dedicated to providing water utility service to the public.

F. New Schedule of Rates and Charges. A proposed schedule of rates and charges is set forth in Joint Settlement Exhibit 2 to the Settlement Agreement. The parties recommend that the Commission should find that the monthly recurring rates and charges, non-recurring charges and other terms provided for in the proposed schedule attached as Joint Settlement Exhibit 2 are sufficient to produce the results described in Paragraph E above and are each otherwise fair, just, reasonable and non-discriminatory.

G. Additional Agreements of the Parties. In addition to the matters described above, the parties agree that:

i. Pioneer shall file a general rate case no later than three years from the date of the final order in this Cause, unless the OUCC approves of a delay in writing at least ninety days prior to the expiration of the three-year period.

ii. Pioneer shall establish a separate restricted account to hold all funds collected through its rates and charges for tank painting and maintenance and provide information on activity in the account as part of its Annual Report to the Commission.

iii. At the conclusion of a three-year period beginning with Pioneer's implementation of the monthly recurring rates and charges approved in this Cause, Pioneer shall file an amended tariff removing any costs associated with its rate case expense in this Cause from its base rates.

iv. Pioneer shall establish a regular program of monitoring its water loss, locating leaks and submit separate water loss reports for the calendar years 2013 and 2014 as an attachment to the Annual Reports it files with the Commission for each of those years.

v. Pioneer shall complete the change out of its manual-read meters with remote-read meters within 5 years of the date a final order is issued in this Cause.

vi. Pioneer shall implement a program of turning all valves on its facilities every three years.

vii. Pioneer shall investigate what cost-effective steps it can take to further water conservation and encourage more efficient use of water by its customers, including without limitation adding a brief comment concerning efficient water usage its annual Customer Confidence Report and implementing where considered possible the water conservation measures that the Indiana Water Shortage Task Force has recommended water utilities consider.

viii. Pioneer shall investigate within 12 months of the issuance of a final order in this Cause the possibility of having a comprehensive master plan prepared for its system and share the results of its investigation with the Town; provided, however, Pioneer shall have no obligation to have a comprehensive master plan actually prepared unless Pioneer first determines that incurring the costs associated with preparing such a plan would be prudent and such costs would be subject to recovery through the rates and charges collected from customers. Notwithstanding the foregoing, Pioneer shall provide the Town with such information about Pioneer as the Town may reasonably request for land use planning and economic development purposes, including without limitation information on system facilities and capabilities and the utility's assessment of the prospects of usage and customer growth.

5. **Commission Analysis and Findings Regarding the Settlement Agreement.** In several Orders of the Commission in other proceedings, we have previously discussed our policy with respect to settlements:

Indiana law strongly favors settlement as a means of resolving contested proceedings. *See, e.g., Manns v. State Department of Highways*, (1989), Ind., 541 N.E.2d 929, 932; *Klebes v. Forest Lake Corp.*, (1993), Ind. App. 607 N.E.2d 978, 982; *Harding v. State*, (1992), Ind. App., 603 N.E.2d 176, 179. A settlement agreement "may be adopted as a resolution on the merits if [the Commission] makes an independent finding, supported by substantial evidence on the record as

a whole, that the proposal will establish 'just and reasonable' rates." *Mobil Oil Corp. v. FPC*, (1974), 417 U.S. 283, 314 (emphasis in original).

*Indianapolis Power & Light Co.*, Cause No. 39936, p. 7 (IURC 9/24/95); see also *Commission Investigation of Northern Ind. Pub. Servo Co.*, Cause No. 41746, p. 23 (IIJRC 9/23/02). This policy is consistent with expressions to the same effect by the Supreme Court of Indiana. See, e.g., *Mendenhall v. Skinner & Broadbent Co.*, 728 N.E.2d 140, 145 (Ind. 2000) ("The policy of the law generally is to discourage litigation and encourage negotiation and settlement of disputes"); *In re Assignment of Courtrooms, Judge's Offices and Other Facilities of St. Joseph Superior Court*, 715 N.E.2d 372, 376 (Ind. 1999) ("Without question, state judicial policy strongly favors settlement of disputes over litigation").

Nevertheless, pursuant to the Commission's procedural rules, and prior determinations by this Commission, a settlement agreement will not be approved by the Commission unless it is supported by probative evidence. 170 IAC 1-1.1-17. 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). Any settlement agreement that is approved by the Commission "loses its status as a strictly private contract and takes on a public interest gloss." *Id.* (quoting *Citizens Action Coalition v. PSI Energy, Inc.*, 664 N.E.2d 401, 406 (Ind. Ct. App. 1996)). Thus, the Commission "may not accept a settlement merely because the private parties are satisfied; rather [the Commission] must consider whether the public interest will be served by accepting the settlement." *Citizens Action Coalition*, 664 N.E.2d at 406. Furthermore, any Commission decision, ruling or order - including the approval of a settlement - must be supported by specific findings of fact and sufficient evidence. *United States Gypsum*, 735 N.E.2d 790 at 795 (citing *Citizens Action Coalition v. Public Service Co.*, 582 N.E.2d 330, 331 (Ind. 1991)). Therefore, before the Commission can approve the Settlement Agreement, we must

determine whether the evidence in this Cause sufficiently supports the conclusion that the Settlement Agreement is reasonable, just, and consistent with the purpose of Indiana Code § 8-1.5-3-8, and that such agreement serves the public interest.

In this case, Pioneer accepted most of the adjustments made by the OUCC to Pioneer's accounting presentation and, to the extent it overlapped with the OUCC's presentation, made by the Town. The accounting matters that Pioneer continued to dispute in its rebuttal case were few and the Settlement Agreement reflects the parties' agreement on what they consider an appropriate resolution of each. Further, no evidence was presented that disputed, and the parties have agreed on, the appropriateness of Pioneer's proposed changes to its non-recurring charges, except to round the affected charges to the nearest dollar, and the parties have all agreed in the Settlement Agreement to the rounded charges. The result of the parties' agreement is that Pioneer's annual operating income will be increased by 16.71% in order to provide it with an opportunity to earn additional revenue of \$29,844 calculated as follows:

Rate Base	\$527,037
Effective Rate of Return	<u>7.73%</u>
Resulting Net Operating Income	\$40,740
Less: NOI Under Present Rates	<u>\$11,418</u>
Additional NOI Required	\$29,322
Gross Revenue Conversion Factor	<u>101.7800%</u>
Recommended Revenue Increase	\$29,844

The parties agree that an increase of \$29,844 in operating revenue is fair and reasonable and will provide Pioneer an opportunity to realize an acceptable level of operating income, earn a fair return and not impede its ability to obtain reasonable additional capital necessary to enable it to render adequate, reliable and safe sewage disposal service.

The Commission has before it a large body of evidence with which to judge the reasonableness of the terms of the Settlement Agreement. Based upon our review of that

evidence and consideration of the provisions in the Settlement Agreement and its exhibits, we find the Settlement Agreement is within the range of the possible outcomes based on a weighing of the evidence and a reasonable resolution of the issues in this Cause. The Settlement Agreement provides a middle ground that the parties deemed reasonable, notwithstanding their divergent views with respect to certain specific issues. Each of the factors relevant to the agreed-to increase in annual operating revenue amount generated by Pioneer's monthly recurring rates and charges was addressed by the Parties in their testimony and exhibits, or in the Settlement Agreement and its exhibits. Therefore, the Commission has been able to examine the basis for all of the components of the total revenue requirements and can see exactly how each disputed issue was resolved. We find the provisions of the Settlement Agreement regarding the proposed increase in Petitioner's operating revenues are reasonable for purposes of settlement and amply supported by the evidence of record. Approval of the Settlement Agreement also eliminates the risks, uncertainty and consumption of time and resources of the Commission and the Parties that otherwise would be required in a fully litigated proceeding.

For all of the foregoing reasons, we find the Settlement Agreement is reasonable, supported by the evidence of record and in the public interest and should be approved. We further find the tariff sheets attached to the Settlement Agreement as Joint Settlement Attachment 2 set forth rates and charges that are "nondiscriminatory, reasonable, and just" and should be approved.

With regard to future citation of the Settlement Agreement, we find the Settlement Agreement and our approval of it should be treated in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434 (IURC 3/19/97) and the terms of the Settlement Agreement regarding its non-precedential effect. The Settlement Agreement shall not constitute

an admission or a waiver of any position that any of the Parties may take with respect to any or all of the items and issues resolved therein in any future regulatory or other proceedings, except to the extent necessary to enforce its terms.

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

1. The Settlement Agreement, a copy of which is attached to this Order, is hereby accepted and approved in its entirety and without modification.
2. Pioneer shall and is hereby authorized to increase its monthly recurring rates and charges by 16.71% so as to produce additional revenue of \$29,844 and, together with other revenues, total annual operating revenues of \$209,169.
3. Pioneer shall and is hereby authorized to implement the monthly recurring rates and charges, non-recurring charges, fees and other terms set forth in Joint Settlement Exhibit 2.
4. Pioneer shall file with the Water/Wastewater Division of the Commission a new schedule of rates and charges consistent with Joint Settlement Agreement 2 of this Order, which schedule of rates and charges shall be effective on and after the date of its approval.
5. The parties shall comply full with the agreements described in Finding No. 4(G) of this Order.
6. In accordance with Ind. Code 8-1-2-70, Pioneer shall pay prior to placing into effect the rates and charges approved herein the following itemized charges within twenty (20) days from the date of this Order to the Secretary of the Commission, as well as any additional costs which were or may be incurred in connection with this Cause:

Commission charges  
Legal charges  
UCC charges  
Reporting charges

Total

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

**ATTERHOLT, BENNET, LANDIS, MAYS AND ZIEGNER CONCUR:  
APPROVED:**

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

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