

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

*JA*  
*RB*  
*DLO* *SJK*

IN THE MATTER OF THE INDIANA UTILITY ) REGULATORY COMMISSION'S INVESTIGATION ) INTO THE IMPACTS OF THE TAX CUTS AND JOBS ) ACT OF 2017 AND POSSIBLE RATE ) IMPLICATIONS UNDER PHASE 2 FOR SOUTH ) HAVEN SEWER WORKS, INC. )	CAUSE NO. 45032 S18  APPROVED: DEC 19 2018
--	--

ORDER OF THE COMMISSION

**Presiding Officers:**

**James F. Huston, Chairman**

**David E. Veleta, Senior Administrative Law Judge**

On January 3, 2018, the Indiana Utility Regulatory Commission (“Commission”) initiated an investigation into the impact of the Tax Cuts and Jobs Act of 2017 (“Act”) to review and consider the implications of the Act on utility rates and to determine what additional action, if any, is warranted. The Act contains provisions that, among other things, reduce the corporate federal income tax rate from 35% to 21%, thereby affecting the current rates charged by certain utilities.

As set forth in the Commission’s February 16, 2018 Order in Cause No. 45032 (“February 16 Order”), the investigation into the Act was divided into two phases. The purpose of Phase 1 was “to ascertain the real time existing customer rate impact directly related to the change in the federal income tax rate on the ongoing revenue requirement” for each Respondent<sup>1</sup> and “to foster an expedient process to reflect such impact in customer rates going forward.” Id. at 2 (footnotes omitted). Respondents were required to complete a 30-day filing in Phase 1 revising their rates and charges to reflect the new tax rate. The purpose of Phase 2 was to address all remaining issues, including: (1) the amount and amortization of normalized and non-normalized excess accumulated deferred income taxes (“ADIT”) and the regulatory accounting being used for estimated impacts resulting from the Act, and (2) the timing and method for how these benefits will be realized by customers, whether directly or indirectly.

South Haven Sewer Works, Inc. (“South Haven”) submitted a 30-day filing to reflect the tax implications of the Act in its base rates (“Base Rate Changes”), satisfying Phase 1 of the February 16 Order. The Base Rate Changes were approved by the Commission for South Haven on May 16, 2018.

On May 14, 2018, the Commission issued a docket entry in Cause No. 45032, creating subdockets for the purpose of addressing Phase 2 issues. South Haven was assigned to subdocket S18.

On June 19, 2018, South Haven filed the direct testimony, inclusive of workpapers, of Bobby D. Estep. On October 15, 2018, South Haven and the Indiana Office of Utility Consumer Counselor (“OUCC”) filed their Stipulation and Settlement Agreement (“Settlement Agreement”) with the Commission outlining their resolution of the remaining issues in this proceeding. Also on October

<sup>1</sup> Indiana’s jurisdictional rate-regulated, investor-owned utilities were named Respondents.

15, 2018, South Haven filed the settlement testimony of Bobby D. Estep, and the OUCC filed the testimony of Margaret A. Stull, each in support of the Settlement Agreement.

A public evidentiary hearing was held in this Cause at 1:30 p.m. on October 31, 2018, in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. South Haven and the OUCC appeared and participated in the hearing.

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

**1. Notice and Jurisdiction.** Notice of the hearing in this Cause was given and published as required by law. South Haven is a public utility as that term is defined in Ind. Code § 8-1-2-1(a). The Commission has jurisdiction to approve changes in the schedule of rates, tolls, and charges of Indiana public utilities under Ind. Code § 8-1-2-42. The Commission also has authority to initiate an investigation into all matters relating to any public utility pursuant to Ind. Code § 8-1-2-58. In addition, Ind. Code § 8-1-2-72 authorizes the Commission to alter or amend any order made by the Commission, upon notice and after an opportunity to be heard. Therefore, the Commission has jurisdiction over South Haven and the subject matter of this proceeding.

**2. South Haven's Case-in-Chief.** Bobby D. Estep, Controller of Aqua Indiana, Inc.,<sup>2</sup> testified on behalf of South Haven's proposal to comply with the Commission's Docket Entry dated May 14, 2018.

Mr. Estep first presented South Haven's proposal on excess ADIT. Mr. Estep explained Schedule 3 of Attachment A identified South Haven's December 31, 2017 recorded per-books balance of ADIT accounts, valued both before and after the effects of the Act. Schedule 3 also identified each book-tax difference comprising the balance in each ADIT account. Schedule 2 of Attachment A identified the amount of excess ADIT for South Haven, and indicated the amounts of protected and unprotected excess ADIT. Mr. Estep also explained that, because South Haven shares certain assets (mainly IT assets) with other utilities operated by or affiliated with Aqua Indiana, Inc., excess ADIT balances associated with such shared assets are allocated based on customer counts in a manner similar to the allocation of shared assets in previous general rate case filings. Mr. Estep stated that some unprotected items, such as bad debt and employee benefit related items, are likewise allocated in the same manner.

Mr. Estep testified that South Haven was proposing to apply the Average Rate Assumption Method ("ARAM") to calculate the amortization period for the protected excess ADIT balance, as set forth on Schedule 4 to Attachment A. With respect to unprotected excess ADIT, South Haven proposed to amortize such amount over three years to return the amounts to ratepayers. Mr. Estep testified that South Haven proposed to normalize the unprotected excess ADIT balances over three years due to the differences in the timing of the reversal of the various items.

---

<sup>2</sup> South Haven and Aqua Indiana, Inc. are each affiliated with Aqua America, Inc. Additionally, the Commission's April 29, 2015 Order in Cause No. 44533 approved the merger of South Haven into Aqua Indiana, Inc. pending the approval of certain conditions. The merger has not yet been consummated. Aqua Indiana, Inc. provides certain overhead services for South Haven, including administrative, IT and accounting services, a portion of the costs of which are allocated to South Haven and Aqua Indiana, Inc.'s various divisions.

Mr. Estep next described Schedule 7 to Attachment A, setting forth South Haven's compliance with the Commission's directive to begin using regulatory accounting for all estimated impacts resulting from the Act. Mr. Estep explained that South Haven's regulatory liability was calculated by multiplying the operating revenues subject to change by the rate reduction approved in Phase 1 of Cause No. 45032, resulting in the revenue reduction to be returned to customers.

Mr. Estep explained that South Haven proposed to return the regulatory balances to the ratepayers of South Haven by applying a surcharge credit to customers' bills. Schedule 1 to Attachment A supports South Haven's proposal of three surcharge credit changes of the course of four years. In year one, South Haven will return the entirety of the regulatory liability amounts to ratepayers, as well as amortized excess ADIT. Mr. Estep stated the protected excess ADIT would be returned until the earlier of a base rate case for that division, or until the protected excess ADIT is fully amortized. Mr. Estep also explained that unprotected excess ADIT will be amortized and returned over three years. South Haven proposed to file a revised tariff sheet reflecting the amount of the surcharge credit percentage for each year where a change is warranted.

**3. Settlement Agreement.** The Settlement Agreement, which resolves all Phase 2 issues for South Haven, includes: (1) a mechanism for South Haven to return excess ADIT created by the Act to customers by means of a surcharge credit; (2) provisions for South Haven to recognize and return to customers the difference between the 35% effective federal income tax reflected in approved base rates and charges and the revised 21% federal income tax rate, which became effective on January 1, 2018, recovered through approval of the Base Rate Changes ("Tax Regulatory Liability"); and (3) related ancillary provisions.

**4. Evidence Supporting the Settlement Agreement.**

**A. South Haven.** Bobby D. Estep provided testimony in support of the Settlement Agreement on behalf of South Haven. Mr. Estep summarized that the Settlement Agreement addresses all issues relating to South Haven's Phase 2 tax proceeding. Mr. Estep explained that if the Settlement Agreement is approved, it would provide, on a prospective basis, a surcharge credit to South Haven's ratepayers.

Mr. Estep initially summarized the Settlement Agreement's Section 1.A, its provision setting forth the protected and unprotected excess ADIT balances for South Haven as of December 31, 2017. Mr. Estep noted that Schedule 2 to the Settlement Agreement also included the amounts of Indiana shared items (such as IT assets) that have been allocated to South Haven, as explained in his direct testimony. Mr. Estep testified that unprotected ADIT balance for South Haven is a positive number because it represents deferred tax assets ("DTA"), which result from primarily employee benefit related timing differences deducted for book purposes that are not allowed as a deduction on tax returns until the employee recognizes the benefit. As a result of the Act, the DTAs were lowered from 35% to 21%, and the difference is to be collected from the ratepayer. Mr. Estep testified that South Haven and the OUCC negotiated several aspects in ascertaining the ADIT balance figures for South Haven, including the appropriate inputs and methodology by which to calculate the ADIT balances.

Mr. Estep next summarized that the Settlement Agreement proposes to apply ARAM to calculate the amortization period for South Haven's protected excess ADIT balance. Application of ARAM results in annual revenue reduction of the protected excess ADIT balances of \$26,021, as listed in Section 1.B of the Settlement Agreement. Mr. Estep explained that South Haven's case-in-

chief proposal on this point proposed reversing the excess ADIT balances using the 2018 estimated ARAM calculation. Following negotiations with the OUCC, Mr. Estep described that the Settling Parties reasonably agreed to use a 5-year average ARAM amount to normalize the return of the excess deferred taxes to ratepayers. Mr. Estep also explained that the Settlement Agreement provides that the unprotected excess ADIT balance would be amortized over a three-year period, resulting in the annual revenue reductions as set forth in Section 1.C of the Settlement Agreement.

Mr. Estep described the Tax Regulatory Liability accrued by South Haven as a result of the Act. Mr. Estep explained that under the Settlement Agreement, the Tax Regulatory Liability will be refunded via a surcharge credit and returned to the customers over 12 months. Mr. Estep explained that the surcharge credit will also be the mechanism for returning the amortized protected and unprotected excess ADIT to customers. Mr. Estep described that while the surcharge credits will change over time, in year one, the surcharge credit for South Haven will be 2.56%. Mr. Estep explained that the proposed surcharge credit resulted from settlement negotiations with the OUCC. For example, Mr. Estep stated that the OUCC disagreed with calculating the surcharge credit by dividing the total amount to be returned to customers by the 2018 projected revenue, but the parties eventually agreed that the reduction in rates would be based on the revenue requirement used in each utility's most recent base rate case.

Mr. Estep next stated that in the event the surcharge credit percentage for South Haven in a given year results in either an over-refund or under-refund to its ratepayers, such amount will be trued-up or reconciled and used in the calculation of the next year's surcharge credit for South Haven. This agreement is set forth in Section 1.F of the Settlement Agreement.

Mr. Estep explained that Section 1.G of the Settlement Agreement contains the mechanism for filing an annual revised tariff sheet to properly implement the surcharge credit as it shall be determined for each 12-month period. Mr. Estep discussed the revised tariff sheets for year 1 are attached to the Settlement Agreement as Attachment B. In ensuing years, the Settling Parties agreed that South Haven would have until April 1<sup>st</sup> of the following year to submit the tariff for the next twelve-month period. To coordinate with the OUCC, Mr. Estep said South Haven has agreed to provide the OUCC with its proposed tariffs for the next twelve-month period, as well as any reconciliations and supporting workpapers, for the OUCC's review and input.

Mr. Estep noted that, in its April 29, 2015 Order in Cause No. 44533, the Commission has authorized South Haven to merge into Aqua Indiana, Inc., subject to the satisfaction of certain conditions. Section I.H of the Settlement Agreement recognizes such Order, and provides that, upon the consummation of the merger, the obligations of South Haven as set forth in the this Settlement Agreement will transfer to Aqua Indiana, Inc.

Mr. Estep testified that the Settlement Agreement contained other provisions commonly found in settlements presented to the Commission. Mr. Estep concluded his testimony by asserting that the Settlement Agreement fully and fairly addresses all issues associated with the impact of the Act on South Haven's rates and charges, is supported by and is within the scope of the evidence presented by the Settling Parties, and was the result of extensive arms' length, good faith negotiations. Mr. Estep stated that, in his opinion, the Settlement Agreement is in the public interest and should be approved by the Commission in all respects.

**B. OUCC.** Margaret A. Stull supported the Settlement Agreement on behalf of the OUCC, including a review of the rate adjustment and ratepayer benefits achieved by the Settlement Agreement. Ms. Stull described that the Settlement Agreement provides tax benefits to customers in two ways: (1) a surcharge credit to fully refund over twelve months the Tax Regulatory Liability created by excess taxes embedded in South Haven's base rates since January 1, 2018; and (2) amortization of excess ADIT as of December 31, 2017.

Ms. Stull explained that the Settlement Agreement sets forth the amount of over-collected revenue by South Haven as \$66,641. Ms. Stull stated the Settlement Agreement provides such over-collected revenue will be credited to active customers through a surcharge credit over a twelve-month period to be reflected in the first full billing month following issuance of a Final Order approving the Settlement.

Ms. Stull next described how the Settlement Agreement addresses the amortization of excess ADIT. Ms. Stull explained that excess ADIT represents the amount a utility has collected from ratepayers to pay future taxes that, as a result of the reduction in tax rates, will no longer be imposed and needs to be "repaid" or returned to customers. Ms. Stull testified that excess ADIT can either be protected (results from temporary federal income tax differences generated by the different book and tax depreciated rates) or unprotected (all other temporary federal income tax differences). Ms. Stull stated the Settlement Agreement set out the amounts of protected excess ADIT balance, which the parties agreed would be reversed using the ARAM method. Ms. Stull testified that based on South Haven's utility plant records, the remaining useful life of its utility plant is approximately 30 years and approximates the expected amortization period for protected excess ADIT. Ms. Stull also described the calculations for the amortization of unprotected excess ADIT, all of which calculations are accurately reflected in Attachment A to the Settlement Agreement.

Ms. Stull next explained that South Haven will annually true-up the amount returned to customers as compared to the amount reflected on Attachment A to the Settlement Agreement, and that the amount of the true-up will be used in the calculation of the next year's surcharge credit. Ms. Stull recognized that due to the different amounts to be returned over different time periods, as well as the necessity of the true-up, the amount of the surcharge credit will differ from year to year. Ms. Stull testified that the surcharge credit in Year 1 will be 2.56%.

Ms. Stull also addressed the compliance filings contemplated by the Settlement Agreement, including that South Haven will file an annual revised tariff sheet reflecting the amount of the surcharge credit percentage. She also noted that South Haven will have until April 1 of the following year to submit the tariff for the next twelve-month period, and that South Haven and the OUCC have agreed to work together in advance of each compliance filing to address any concerns or questions the OUCC may have.

Ms. Stull validated that the revised tariffs included as Settlement Agreement Attachment B properly implement the revenue reductions contemplated by the terms of the Settlement Agreement. Ms. Stull testified that the Settlement Agreement reflects compromises made by South Haven from the positions taken in its initial Phase 2 subdocket testimony, and provides a fair result for South Haven's ratepayers.

**5. Commission Discussion and Findings.** Settlements presented to the Commission are not ordinary contracts between private parties. *U.S. Gypsum, Inc. v. Ind. 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 Coal. 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 Coal.*, 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. *U.S. Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coal. of Ind., Inc. v. Pub. Serv. 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 Ind. Code ch. 8-1-2, and that such agreement serves the public interest.

Based on the evidence of record, particularly the supporting settlement testimony, we find that the Settlement Agreement represents a reasonable resolution to the issues raised in this proceeding and is in the public interest. The Settlement Agreement provides a fair and reasonable approach for returning the benefits that result from the Act to South Haven’s customers. We previously approved base rate reductions for South Haven through our 30-day filing process to ensure that base rates paid by those customers reflect the reduction in the federal income tax rate from 35% to 21%. In this second phase of our investigation, the parties have reached a consensus on providing further benefits to customers by addressing the return of the Tax Regulatory Liability and refunding excess ADIT.

**A. Tax Regulatory Liability Refund.** The Tax Regulatory Liability is comprised of rates and charges collected by South Haven between January 1, 2018 and May 15, 2018 based upon a federal income tax expense at a rate of 35% instead of the Act’s 21% rate. Our January 3, 2018 Order in underlying Cause No. 45032 required South Haven to record the difference between the 35% and revised 21% federal income tax rate as a regulatory liability.

Under the terms of the Settlement Agreement, the Tax Regulatory Liability accrued by South Haven will be returned to customers. The Settlement Agreement includes a mechanism whereby South Haven’s Tax Regulatory Liability will be refunded via a surcharge credit and returned to their respective customers over a 12 month period. We find the Settlement Agreement’s approach for the return of the Tax Regulatory Liability is reasonable and will benefit the public by ensuring the Tax Regulatory Liability is quickly and appropriately translated into lower utility rates for customers.

**B. Excess ADIT Reversal.** Depreciation charges and taxes are operating expenses incurred by utilities. Utilities use straight-line depreciation to determine the depreciation charges that are included in operating expenses. In contrast, accelerated depreciation deductions are permitted by the Internal Revenue Code (“IRC”) for determining taxes payable. This means that a utility’s income taxes payable in a period may differ from its income tax expense for the period that it records for ratemaking purposes. The large early deductions result in reduced taxes payable during the early years of an asset’s life followed by corresponding increases in taxes payable during the later years of the asset’s life. The same amount of taxes eventually must be paid using either accelerated or straight-line depreciation as long as the tax rate is unchanged.

Because South Haven collects more from ratepayers to cover its tax obligation early in the life of an asset than it actually pays in taxes during such early period, the difference is accounted for in a deferred tax account, or reserve. If tax rates are constant, deferred taxes for this asset are built up in the account and then drawn down to zero over the asset's life as lower tax charges during the asset's early years are followed by higher taxes during its later years. South Haven accounts for this as an ADIT liability. However, as a result of the Act's reduction in the income tax rate, South Haven will now pay less in future taxes than it anticipated when funding the ADIT, resulting in excess ADIT.

The Settlement Agreement addresses both protected and unprotected excess ADIT. The IRC requires balances associated with depreciable property, plant, and equipment (i.e., protected excess ADIT) utilize ARAM to calculate the annual amortization of excess ADIT balances, if the utility has adequate data to apply ARAM. In the Settlement Agreement, the parties agree that the ARAM methodology should be used to amortize the excess protected ADIT balance. Based on South Haven's utility plant records, the remaining useful life of its utility plant is approximately 30 years and approximates the expected amortization period for protected excess ADIT. No specific amortization period is required for the unprotected excess ADIT balances. The parties to the Settlement Agreement have agreed to an amortization period of three years for the unprotected excess ADIT balances. We find these excess ADIT amortization methodologies reasonable and fair.

The Settlement Agreement provides that South Haven shall return the excess ADIT to ratepayers via the surcharge credit, the same mechanism by which the Tax Regulatory Liability will be returned. The amount of the surcharge credit for South Haven will change from year to year, as in Years Two and Three, the surcharge credit will reflect only the return of excess ADIT. By Year Four, following the conclusion of the three-year amortization of unprotected excess ADIT, the surcharge credit will reflect the return of only excess protected ADIT. This mechanism reasonably and efficiently provides the benefits of the Act to ratepayers.

The Settlement Agreement contemplates an annual true-up, so that the surcharge credit accurately returns to customers the appropriate amount as reflected on Settlement Agreement Attachment A, Schedule 1. Additionally, the Settlement Agreement provides that South Haven will submit to the OUCG its proposed tariff for the next twelve-month period, for review and input. We approve of the parties' willingness to collaborate on these issues.

Based on the evidence presented, we find the Settlement Agreement reasonably and appropriately provides for the return of excess ADIT as well as the Tax Regulatory Liability. The clarity of the annual tariffs for South Haven will indicate to customers that the benefits of the Act are being received by them. We further find that the Settlement Agreement serves the public interest by contributing to ensuring bill reductions are issued to customers more quickly than a fully litigated proceeding.

Finally, 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 WL 34880849 at \*7-8 (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 in all respects.
2. The tariff sheet for South Haven, in the clean forms attached as Attachment B to the Settlement Agreement, shall be submitted to the Commission's Water/Wastewater Division for use in the first full billing month following the issuance of this Final Order.
3. Beginning March 1, 2020, South Haven shall annually provide the OUCC with its proposed tariffs for the next twelve-month period, including any reconciliations and supporting workpapers for the OUCC's review and input.
4. Beginning April 1, 2020, South Haven annually shall submit proposed tariffs for the next twelve-month period to the Commission's Water/Wastewater Division for approval.
5. This Order shall be effective on and after the date of its approval.

**HUSTON, FREEMAN, KREVDA, OBER, AND ZIEGNER CONCUR:**

**APPROVED:** DEC 19 2018

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

  
\_\_\_\_\_  
**Mary M. Becerra**  
**Secretary of the Commission**

**STATE OF INDIANA**

**INDIANA UTILITY REGULATORY COMMISSION**

<p><b>IN THE MATTER OF THE INDIANA UTILITY  REGULATORY COMMISSION'S  INVESTIGATION INTO THE IMPACTS OF  THE TAX CUTS AND JOBS ACT OF 2017 AND  POSSIBLE RATE IMPLICATIONS UNDER  PHASE 2 FOR SOUTH HAVEN SEWER  WORKS, INC.</b></p>	<p>) ) ) ) ) ) )</p>	<p><b>CAUSE NO. 45032 S18</b></p>
---	--	-----------------------------------

**STIPULATION AND SETTLEMENT AGREEMENT**

Respondent, South Haven Sewer Works, Inc. (“Respondent”) and the Indiana Office of Utility Consumer Counselor (“OUCC”) (collectively, the “Settling Parties”), solely for purposes of compromise and settlement and to reduce controversy and avoid protracted litigation and having been duly advised by their respective staff, experts and counsel, stipulate and agree that the terms and conditions set forth below represent a fair, just and reasonable resolution of all matters pending before the Indiana Utility Regulatory Commission (“Commission”) in this subdocket in the Commission’s investigation into the effects of the Tax Cuts and Jobs Act of 2017 (the “Act”) on utility rates in Cause No. 45032, subject to their incorporation by the Commission into a final, non-appealable order (“Final Order”) without modification for further condition that may be unacceptable to any Settling Party. If the Commission does not approve this Stipulation and Settlement Agreement (“Settlement Agreement”) in its entirety, the entire Settlement Agreement shall be null and void and deemed withdrawn, unless otherwise agree to in writing by the Settling Parties.

**I. TERMS AND CONDITIONS**

A. The Settling Parties agree that as of December 31, 2017, Respondent’s protected excess accumulated deferred income tax (“ADIT”) balance (before application of a gross up factor) totals \$693,376, and Respondent’s unprotected ADIT balance

(before application of a gross up factor) totals (\$9,041). See Settlement Agreement Attachment A, Schedule 2.

- B. The Settling Parties agree that the protected excess ADIT balance should be amortized in accordance with the application of the average rate assumption method (“ARAM”). See Settlement Agreement Attachment A, Schedule 2. This results in an annual revenue reduction of \$26,021 for the protected ADIT balance. See Settlement Agreement Attachment A, Schedule 1.
- C. The Settling Parties agree that the unprotected excess ADIT balance, which is an asset, should be amortized over a 3-year period. See Settlement Agreement Attachment A, Schedule 2. This results in an annual revenue increase of \$3,014 for the unprotected excess ADIT balance, which partially offsets the annual revenue reduction generated by the excess protected amortization. See Settlement Agreement Attachment A, Schedule 1.
- D. The Settling Parties agree that the regulatory liability amount resulting from the change in the federal income tax rate for the period of January 1, 2018 through up to and including May 15, 2018 totals \$66,641. See Settlement Agreement Attachment A, Schedule 7.
- E. The Settling Parties agree that Respondent will apply a surcharge credit (*i.e.*, negative surcharge) to customers’ bills as a means to return protected excess ADIT, unprotected excess ADIT, and the regulatory liability. Settlement Agreement Attachment A, Schedule 1. The surcharge credit in 2019 (Year One) will reflect a credit for the regulatory liability, which shall be returned to customers over 12

months, amortization of excess protected ADIT, and amortization of excess unprotected ADIT. In 2020 and 2021 (Years Two and Three), the surcharge credit will reflect the return of only excess protected and unprotected ADIT. By 2022 (Year Four), the surcharge credit will reflect the return of only excess protected ADIT. As such, consistent with the above description, the Settling Parties agree there shall be three surcharge credit changes over the course of four years. The Settling Parties agree that in Year One, the surcharge credit shall be 2.56%.

- F. The Settling Parties agree that Respondent will true-up annually the amount actually returned to customers pursuant to the surcharge credit as compared to amount reflected on the row entitled “Total amount to return to customers” on Settlement Agreement Attachment A, Schedule 1. The amount of the true-up amount will be used in calculation of the next year’s surcharge credit.
- G. Due to the different amounts to be returned over different time periods, as well as the necessity for the true-up as described in the preceding section, the amount of the surcharge credit will differ from year to year. The Settling Parties agree that Respondent will file a revised tariff sheet reflecting the amount of the surcharge credit percentage for each year. The first revised tariff sheet will be reflected in the first full billing month following a Final Order approving the Settlement Agreement. The Settling Parties agree that the revised tariff sheet for year 1, attached as Settlement Agreement Attachment B, properly implements the surcharge credit to be applied. Because of the potential for reconciliations as set forth in Section 1.F, the Settling Parties agreed that South Haven shall have until April 1 of the following year to

submit the tariff for such the next twelve-month period. By March 1 of each year, Respondent agrees to provide the OUCC with its proposed tariff for the next twelve-month period, as well as any reconciliations and supporting workpapers for the OUCC's review and input.

- H. The Settling Parties recognize that the Commission, in its April 29, 2015 Order in Cause No. 44533, authorized South Haven to merge into Aqua Indiana, Inc., subject to the satisfaction of certain conditions. The Settling Parties agree that, upon the consummation of the merger of South Haven into Aqua Indiana, Inc., the obligations of South Haven as set forth in this Settlement Agreement shall transfer to Aqua Indiana, Inc.
- I. The Settling Parties agree that this Settlement Agreement fully addresses the impact of the Act on Respondent's rates and charges.

## **II. PRESENTATION OF THE SETTLEMENT TO THE COMMISSION**

- A. The Settling Parties shall support this Settlement Agreement before the Commission and request that the Commission accept and approve the Settlement Agreement. The concurrence of the Settling Parties with the terms of this Settlement Agreement is expressly predicated upon the Commission's approval of the Settlement Agreement in its entirety without any modification or any condition that may be unacceptable by any Settling Party. If the Commission does not approve the Settlement Agreement in its entirety and without change, the Settlement Agreement shall be null and void and deemed withdrawn, upon notice in writing by any Settling Party within fifteen (15)

days after the date of the Final Order that any modifications made by the Commission are unacceptable to it.

- B. The Settling Parties shall jointly file this Settlement Agreement and supporting evidence. The Settling Parties will file testimony specifically supporting the settlement. The Settling Parties will work collaboratively in the preparation of the testimony supporting the settlement agreement. Such evidence together with the evidence previously prefiled by Respondent in this Cause will be offered into evidence without objection and the Parties hereby waive cross-examination of each other's witnesses. The Settling Parties propose to submit this Settlement Agreement and evidence conditionally, and that, if the Commission fails to approve this Settlement Agreement in its entirety without any change or with condition(s) unacceptable to any Settling Party, the Settlement and supporting evidence shall be withdrawn and the Commission will continue to hear this Cause with the proceedings resuming at the point they were suspended by the filing of this Settlement Agreement.
- C. The Settling Parties shall jointly agree on the form, wording and timing of public/media announcement (if any) of this Settlement Agreement and the terms thereof. No Settling Party will release any information to the public or media prior to the aforementioned announcement. The Settling Parties may respond individually without prior approval of the other Settling Parties to questions from the public or media, provided that such responses are consistent with such announcement and do not disparage any of the Settling Parties. Nothing in this Settlement Agreement shall

limit or restrict the Commission's ability to publicly comment regarding this Settlement Agreement or any Order affecting this Settlement Agreement.

**III. EFFECT AND USE OF THE SETTLEMENT**

- A. It is understood that this Settlement Agreement is reflective of a negotiated settlement and neither the making of this Settlement Agreement nor any of its provisions shall constitute an admission by any Settling Party to this Settlement Agreement in this or any other litigation or proceeding. It is also understood that each and every term of this Settlement Agreement is in consideration and support of each and every other term.
- B. This Settlement Agreement shall not constitute and shall not be used as precedent by any person in any other proceeding or for any other purpose, except to the extent necessary to implement or enforce the terms of this Settlement Agreement.
- C. 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 any of the Settling Parties may take with respect to any or all of the items resolved here and in any future regulatory or other proceedings.
- D. The Settling Parties agree that the evidence in support of this Settlement Agreement and the previously prefiled evidence constitute substantial evidence sufficient to support this Settlement Agreement and provide an adequate evidentiary basis upon which the Commission can make any findings of fact and conclusions of law necessary for the approval of this Settlement Agreement, as filed. If requested by the

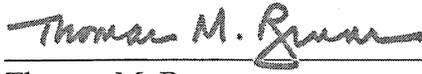
Commission, the Settling Parties shall prepare and file an agreed proposed order with the Commission.

- E. The communications and discussions during the negotiations and conferences and any materials produced and exchanged concerning this Settlement Agreement all relate to offers of settlement and shall be privileged and confidential, without prejudice to the position of any Settling Party, and are not to be used in any manner in connection with any other proceeding or otherwise.
- F. The undersigned Settling Parties have represented and agreed that they are fully authorized to execute the Settlement Agreement on behalf of their designated clients, and their successors and assigns, who will be bound thereby.
- G. The Settling Parties shall not appeal or seek rehearing, reconsideration or a stay of the Final Order approving this Settlement Agreement in its entirety and without change or condition(s) unacceptable to any Settling Party (or related orders to the extent such orders are specifically implementing the provisions of this Settlement Agreement). The Settling Parties shall support or not oppose this Settlement Agreement in the event of any appeal or a request for a stay by a person not a party to this Settlement Agreement or if this Settlement Agreement is the subject matter of any other state or federal proceeding.
- H. The provisions of this Settlement Agreement shall be enforceable by any Settling Party before the Commission and thereafter in any state court of competent jurisdiction as necessary.

I. This Settlement Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

ACCEPTED and AGREED as of the 15th day of October, 2018.

SOUTH HAVEN SEWER WORKS, INC.



---

Thomas M. Bruns  
President

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR

---

Tiffany Murray  
Deputy Consumer Counselor

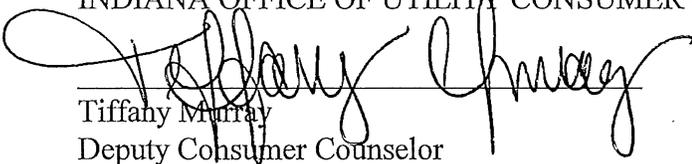
**ACCEPTED and AGREED as of the 15th day of October, 2018.**

SOUTH HAVEN SEWER WORKS, INC.

---

Thomas M. Bruns  
President

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR



---

Tiffany Murray  
Deputy Consumer Counselor

**SOUTH HAVEN SEWER WORKS**

**IURC CAUSE NO. 45032-S18**

**ATTACHMENT A - SCHEDULES**

**(Uploaded to IURC Online Portal as a separate file in native Excel)**

South Haven Sewer Works, Inc., d/b/a Aqua Indiana, Inc.  
 (Approved October 19, 2011 – Cause No. 43974)

A) GENERAL SERVICE RATES

Flat Rate – Per Month  
 Single family residence per month \$72.77

B) METERED COMMERCIAL RATES – PER MONTH

Metered Rates – Per Month

All other users except Hauled-In Wastestreams – (based upon water usage) Rate Per 1,000 Gallons:

First	5,600 gallons	\$12.184
Next	9,400 gallons	\$10.845
All over	15,000 gallons	\$8.442

All other users, except Hauled-In Wastestreams users, shall pay a minimum rate in accordance with the following applicable size water meter installed, for which the user will be entitled to sewerage service based upon the above schedule of metered water usage, with minimum as set forth below.

Water Meter Size	Rate	Minimum Gallons
5/8 Inch	\$68.232	5,600
3/4 Inch	\$68.232	5,600
1 Inch	\$119.850	10,360
1 1/4 Inch	\$171.267	15,130
1 1/2 Inch	\$231.039	22,210
2 Inch	\$384.687	40,410
3 Inch	\$811.696	90,990
4 Inch	\$1,366.770	156,740
6 Inch	\$3,074.464	359,020

C) Hauled-in Waste Not to fall below \$61.59  
 Hauled-in Waste based on per total gallons from Job Tickets for month

Re-Connection Fee – To restore service following disconnection for failure to pay bill in accordance with IURC rules for utility:

Re-Connection requiring installation of interceptor mechanism	\$400.00
Re-Connection not requiring installation of interceptor mechanism	\$100.00
Connection Charge (Tap Fee) – for connection at lot line per residence	\$400.00

System Development Charge pursuant to Cause No. 42985 \$820.00

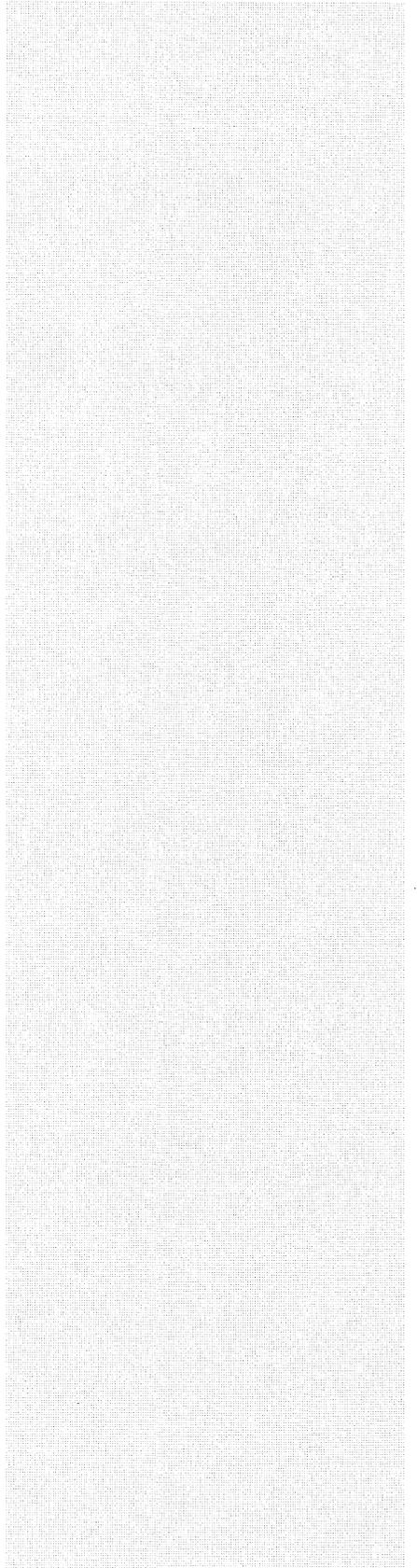
Collection and Late Payment Charge – All bills for sewage not paid within 17 days from the billing date thereof, as stated in such bills, shall be subject to the collection or deferred payment charge of 10% on the first \$3.00, and 3% on the excess over \$3.00.

Returned Check Charge – All checks or other negotiable instruments returned for insufficient funds from a financial institution shall be assessed a fee of \$20.00.

I.U.R.C. No. S-3  
2<sup>nd</sup> Replacement Sheet No. 2

TCJA Surcharge Credit

2.56%



South Haven Sewer Works, Inc., d/b/a Aqua Indiana, Inc.  
 (Approved October 19, 2011 – Cause No. 43974)

A) GENERAL SERVICE RATES

Flat Rate – Per Month

Single family residence per month \$72.77

B) METERED COMMERCIAL RATES – PER MONTH

Metered Rates – Per Month

All other users except Hauled-In Wastestreams – (based upon water usage) Rate Per 1,000 Gallons:

First	5,600 gallons	\$12.184
Next	9,400 gallons	\$10.845
All over	15,000 gallons	\$8.442

All other users, except Hauled-In Wastestreams users, shall pay a minimum rate in accordance with the following applicable size water meter installed, for which the user will be entitled to sewerage service based upon the above schedule of metered water usage, with minimum as set forth below.

Water Meter Size	Rate	Minimum Gallons
5/8 Inch	\$68.232	5,600
3/4 Inch	\$68.232	5,600
1 Inch	\$119.850	10,360
1 1/4 Inch	\$171.267	15,130
1 1/2 Inch	\$231.039	22,210
2 Inch	\$384.687	40,410
3 Inch	\$811.696	90,990
4 Inch	\$1,366.770	156,740
6 Inch	\$3,074.464	359,020

C) Hauled-in Waste Not to fall below \$61.59  
 Hauled-in Waste based on per total gallons from Job Tickets for month

Re-Connection Fee – To restore service following disconnection for failure to pay bill in accordance with IURC rules for utility:

Re-Connection requiring installation of interceptor mechanism	\$400.00
Re-Connection not requiring installation of interceptor mechanism	\$100.00
Connection Charge (Tap Fee) – for connection at lot line per residence	\$400.00

System Development Charge pursuant to Cause No. 42985 \$820.00

Collection and Late Payment Charge – All bills for sewage not paid within 17 days from the billing date thereof, as stated in such bills, shall be subject to the collection or deferred payment charge of 10% on the first \$3.00, and 3% on the excess over \$3.00.

Returned Check Charge – All checks or other negotiable instruments returned for insufficient funds from a financial institution shall be assessed a fee of \$20.00.

TCJA Surcharge Credit

2.56%