

ORIGINAL

Commissioner	Yes	No	Not Participating
Huston	✓		
Freeman	✓		
Krevda	✓		
Ober	✓		
Ziegner	✓		

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF BROWN)
COUNTY WATER UTILITY, INC., OF)
MORGANTOWN, INDIANA, FOR (1) THE)
AUTHORITY TO INCREASE ITS RATES AND)
CHARGES FOR WATER SERVICE, (2) FOR)
APPROVAL OF A COST OF SERVICE STUDY AND)
RATE DESIGN, AND (3) FOR APPROVAL OF A)
NEW SCHEDULE OF RATES AND CHARGES FOR)
WATER SERVICE)

CAUSE NO. 45210

APPROVED: APR 29 2020

ORDER OF THE COMMISSION

Presiding Officers:

David L. Ober, Commissioner

Carol Sparks Drake, Senior Administrative Law Judge

On March 7, 2019, Brown County Water Utility, Inc. (“BCW” or “Petitioner”) filed a Verified Petition with the Indiana Utility Regulatory Commission (“Commission”) seeking authority to increase Petitioner’s water rates and charges, approval of a cost of service study (“COSS”) and rate design, and approval of a new schedule of water rates and charges.

On April 10, 2019, BCW filed the direct testimony and exhibits constituting its case-in-chief. On April 22, 2019, the Town of Nashville, Indiana, (“Nashville”) petitioned to intervene. Nashville’s intervention was granted on May 3, 2019. Motions were subsequently filed to amend the procedural schedule, with BCW, Nashville, and the Indiana Office of Utility Consumer Counselor (“OUCC”) (collectively, the “Parties”) on August 23, 2019, jointly advising the Commission: (a) a settlement in principle had been reached upon BCW’s revenue requirement; (b) the Parties had agreed to bifurcate this Cause to separately address Petitioner’s revenue requirement (Phase 1) and rate design issues (Phase 2); (c) the Parties’ agreed rate increase should be implemented in Phase 1 on an interim, across-the-board basis; (d) BCW’s rate design issue, if not dismissed, will be presented in Phase 2; and (e) a new procedural schedule bifurcating the hearing in this Cause consistent with the foregoing should be established.

On August 27, 2019, a docket entry was issued granting the requested bifurcation and revising the procedural schedule. On September 11, 2019, BCW filed the Parties’ Stipulation and Settlement Agreement with respect to Phase 1 (“Phase 1 Settlement”). BCW’s revenue requirement was then heard and considered, with the Commission issuing an Order on January 2, 2020, (“Phase 1 Order”) in which increased rates and charges were approved on an interim across-the-board basis pending resolution of Petitioner’s rate design in Phase 2. BCW’s COSS and rate design are now the subject of Phase 2.

On November 12, 2019, the following Phase 2 related filings were made:

- BCW's Notice of Phase 2 Stipulation and Settlement Agreement and Request to Modify Procedural Schedule
- Phase 2 Stipulation and Settlement Agreement ("Phase 2 Settlement")
- Settlement Testimony and Exhibits of Darrell Baker, Operation/Field Service Manager at BCW
- Settlement Testimony and Exhibit of Ben Foley, Certified Public Accountant and Principal in Sherman, Barber, and Mullikin, a Professional Corporation
- Settlement Testimony of Jane Gore, Nashville Town Council President and Nashville employee
- Settlement Testimony of Margaret A. Stull, Chief Technical Advisor in the OUCC's Water/Wastewater Division.

On November 12, 2019, BCW requested the Phase 2 procedural schedule be modified to eliminate Petitioner's rebuttal filing because this filing was no longer necessary. On November 21, 2019, a docket entry was issued in which BCW's rebuttal filing deadline was not vacated. BCW was, instead, advised that if Petitioner opted to not file rebuttal testimony, BCW should file a notice to that effect. BCW subsequently filed a notice confirming Petitioner was filing no Phase 2 rebuttal testimony.

On December 11, 2019, a docket entry was issued requesting each of the Parties to provide certain information. The information BCW was asked about included identifying the water customers BCW was serving on February 7, 2018, within the area commonly known as Firecracker Hill ("Firecracker Hill" or the "Area") and whether BCW contends the Commission may approve the Phase 2 Settlement without BCW amending its petition. In responding on December 18, 2019, to this docket entry, BCW acknowledged that its petition initiating this Cause generally sought approval of new rates and charges for water service, Petitioner's COSS and rate design, and a new schedule of rates and charges. BCW stated the Phase 2 Settlement proposes the Commission approve these items and also approve BCW and Nashville's agreements regarding Petitioner serving Firecracker Hill, i.e., "the previously disputed service Area." BCW's Responses to December 11, 2019 Docket Entry at p. 2. According to BCW:

The [Phase 2] Settlement Agreement summarizes the evidence and presents the agreement of Petitioner and Nashville that Petitioner's provision of service to the Area does not violate the Regulatory Ordinance. **If the Commission believes a finding that Petitioner's provision of service to the Area does not violate Nashville's Regulatory Ordinance is appropriate, it was the intent of the [Phase 2] Settlement Agreement to facilitate and support that determination. This matter is not addressed in the March 7, 2019 Petition.** But this matter is a factual stipulation rather than an affirmative request for relief, which would not typically appear in a petition for relief. Petitioner believes this ancillary factual finding, if necessary, is allowed under the March 7, 2019 Petition. (emphasis added)

Id. at p. 3. BCW also requested approval of an agreement included in the Phase 2 Settlement to provide Nashville with certain notice of BCW's future rate cases.

On December 17, 2019, a docket entry was issued requesting clarification about an adjustment in BCW witness Foley's rate schedules and how the cost of water sold is to be calculated. On December 19, 2019, the Parties filed an amended joint response to the December 11, 2019 docket entry. On December 20, 2019, BCW and the OUCC filed their respective responses to the December 17, 2019 docket entry, and on December 26, 2019, a docket entry was issued following up on the information BCW provided in responding to the December 17, 2019 docket entry. BCW filed responses on January 3, 2020, to the December 26, 2019 docket entry.

An evidentiary hearing was held upon Phase 2 on January 9, 2020, at 9:30 a.m. in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. The Parties were present, by counsel, and participated. The evidence of the respective Parties was admitted without objection, and BCW's witness Baker and Nashville's witness Gore responded to questions from the Presiding Administrative Law Judge.¹ On January 9, 2020, just prior to the hearing commencing, Nashville filed a supplemental response to the docket entry issued on December 11, 2019.

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

1. Notice and Jurisdiction. Due, legal, and timely notice of the evidentiary hearing for Phase 2 was given and published as required by law. BCW is a not-for-profit utility as defined in Ind. Code § 8-1-2-125 and a public utility as defined by Ind. Code § 8-1-2-1(a). The Commission has authority to approve BCW's rates and charges for utility service under Ind. Code § 8-1-2-125 and its COSS and rate design under Ind. Code §§ 8-1-2-42, -125, and related statutes; therefore, the Commission has jurisdiction over BCW and the subject matter of this Cause. In addition, Petitioner demonstrated its customers were notified of the Verified Petition initiating this rate case as required by 170 IAC 6-1-18(C).

2. Petitioner's Characteristics. BCW is a not-for-profit public water utility incorporated in the State of Indiana with its principal place of business located at 5130 North State Road 135, Morgantown, Indiana. BCW is owned by its members who are also customers. BCW was formed in the 1960s and is governed by a seven member Board of Directors. Petitioner provides water service to approximately 5,219 residential customers and 176 commercial and institutional customers in Brown, Bartholomew, Morgan, Monroe, and Johnson Counties. BCW also renders wholesale water service to Nashville, with Nashville being BCW's only current

¹ At the conclusion of the questions of Mr. Baker, BCW's counsel Cooper requested leave to offer "a clarifying question that follows up on one of your questions earlier as to the pipes located near the disputed territory." Tr. p. B-23. Consistent with the Commission's practice to generally not reopen questioning after Presiding Officers' questions, this request was denied. Mr. Cooper then asked to make an offer to prove "on the follow-up question" that he had not been permitted to ask. Tr. p. B-24. At the conclusion of the hearing, Mr. Cooper was given this opportunity. "Mr. Cooper is welcome to make his offer of proof once we go off the record." Tr. p. B-39. Based on the transcript of the offer to prove, what then transpired were approximately five pages of questions to and answers from Mr. Baker to questions posed by another BCW attorney, not Mr. Cooper, and the offer of an exhibit not previously prefiled, offered, or referenced when Mr. Cooper asked leave to pose "a clarifying question." Tr. p. B-23. Thus, the Commission finds that what transpired exceeded the offer of proof Mr. Cooper was granted leave to make.

wholesale customer. BCW produces and treats about 90% of its water and purchases the balance from Nashville, Citizens Water, and Jackson County Water.

3. **Relief Requested.** The Commission approved increased rates and charges for BCW's water service in the Phase 1 Order on an interim across-the-board basis, pending resolution of Petitioner's COSS and rate design issues. In Phase 2, BCW requests Commission approval of rate design to be incorporated into Petitioner's new schedule of rates and charges. At the hearing, BCW witness Baker testified the Commission must also approve the Parties' agreements in the Phase 2 Settlement concerning BCW providing water service to Firecracker Hill or BCW will not dismiss litigation Petitioner commenced in the United States District Court Southern District of Indiana, Indianapolis Division, as Cause No. 1:17-cv-02134-TWP-TAB (the "Federal Litigation").² Tr. p. B-17.

4. **Petitioner's Case-in-Chief on COSS and Rate Design Issues.**

A. **Ben Foley.** Mr. Foley's testimony explaining his COSS and the rate design he originally proposed was admitted at the Phase 1 hearing, but summarizing this testimony was deferred in the Phase 1 Order until Phase 2 when rate design is at issue. Phase 1 Order, p. 6.

Mr. Foley testified he was asked to prepare a COSS for BCW because Petitioner had never done a COSS and had become concerned whether some of its customer classes were subsidizing other customer classes. He testified the general purpose of a COSS is to equitably allocate to each customer class the total costs a utility incurs to provide that service, with this process including an in-depth analysis of historical costs and allocating these costs based on the consumption characteristics of each class. Mr. Foley stated a COSS provides valuable information for purposes of rate design to ensure each customer class appropriately contributes.

Mr. Foley testified the methodology he used in preparing the COSS for BCW was the Base-Extra Capacity method in accordance with the American Water Works Association sixth edition of Principles of Water Rates, Fees and Charges ("M1 Manual"). He stated the Base-Extra Capacity method separates costs into functional cost categories based upon allocating the utility's revenue requirements and investment in plant to the utility's functional cost categories.

² As set forth in footnote 1 of the Phase 1 Order, BCW was encouraged during an attorneys' conference on October 25, 2019, to appropriately amend its petition in this Cause if any relief other than what BCW set forth in its petition is sought. In that same footnote, BCW was cautioned again about the need to modify its petition if relief beyond "what has been noticed is sought." BCW's petition was not amended, despite these admonitions; therefore, the notice given the public upon what is being heard in this matter identified rate and rate design related relief. That's the limit of what BCW has properly placed before the Commission, notwithstanding BCW witness Baker's testimony at the hearing, Tr. p. B-17, and the Parties' machinations casting their agreements upon future water service to the Area as a factual stipulation and/or not contrary to the Regulatory Ordinances the Commission approved in Cause No. 44944 on February 7, 2018 (the "44944 Order"). The scope of this proceeding does not include the propriety of BCW providing water service to Firecracker Hill. The Commission also notes that Section 1.5 of the Agreement of Settlement entered into between BCW and Nashville on October 22, 2019, and filed in the Federal Litigation (the "Federal Settlement Agreement") sets forth what BCW and Nashville must resolve in "the IURC dispute," i.e., Cause No. 45210, and Section 1.5 does not include approval of the Parties' agreements concerning water service to Firecracker Hill. *See also* Federal Settlement Agreement, Recital C., p. 1.

Mr. Foley summarized and explained the procedures and calculations he performed in connection with BCW's COSS. He testified the capacity factors were calculated consistent with the M1 Manual, with non-coincident peaking factors determined for each customer class. Mr. Foley also explained the allocation of utility plant and operation and maintenance disbursements to functional cost components and his calculation of unit costs of service and allocation of cost of service by customer class.

Mr. Foley testified BCW's monthly service charges for residential and commercial classes are proposed by meter size while the proposed wholesale monthly service charge was determined based on the meters currently serving BCW's wholesale customer, to be levied as a single monthly service charge to that customer. He stated BCW's proposed base monthly service charges include customer cost components for meter and billing costs, as well as extra capacity components for maximum day and maximum hour. Mr. Foley stated the meter cost per unit is adjusted based on the equivalency factor for each meter size, and the extra capacity per unit costs for maximum day and maximum hour were also adjusted based on the equivalency factor for each meter size. Mr. Foley testified the proposed retail customer rate structure retains BCW's seven-tier declining block rate structure but eliminates the metered user minimum charges, and the proposed wholesale rate structure eliminates the fixed monthly standby charges. Mr. Foley testified the proposed rate structure for all customer classes includes monthly service charges and volume charges. He stated the rates supported by the allocated cost of service (as originally proposed) compared to normalized receipts under BCW's then existing rates result in a decrease in average residential receipts of approximately 14.24% and increases of approximately 35.56% for the small commercial/industrial customer class and 154.08% for the wholesale class.

Mr. Foley prepared and sponsored a Schedule of Current and Proposed Rates and Charges based on the rates BCW originally proposed in this Cause. He also prepared a comparison of monthly bills between those proposed rates and BCW's rates before Phase 1 interim rates were approved.

5. Phase 2 Settlement Testimony. The Phase 2 Settlement includes the Parties' agreements upon Petitioner's rate design, and it includes certain agreements between Nashville and BCW, including their agreement upon water service to Firecracker Hill. The Parties request the Commission not issue a finding approving any particular COSS.

A. Ben Foley. Mr. Foley provided testimony supporting the Phase 2 Settlement. He stated the Phase 1 Settlement provided that the rate increase approved for BCW in Phase 1 will be implemented according to the COSS and rate design approved in Phase 2. Mr. Foley calculated that BCW's rate design, as agreed in the Phase 2 Settlement, results in the following rate impact:

Residential Decrease	(1.25%)
Small Commercial Increase	35.56%
Wholesale Increase	34.00%

Mr. Foley testified the rate design set forth in the Phase 2 Settlement represents a negotiated result that moves the wholesale rates Nashville pays BCW toward a cost of service based rate

while mitigating the potential rate shock to this wholesale customer; therefore, it incorporates the ratemaking principle of gradualism. Mr. Foley stated the agreed rate design is within the range of results the evidence supports, and this rate design adequately and fairly provides for the current needs of BCW and its ratepayers. He testified the agreed rate design is reasonable and should be approved.

B. Darrell Baker. In his Phase 2 settlement testimony, Mr. Baker, who serves as BCW's Operation/Field Service Manager, offered his interpretation of Nashville Ordinance No. 2017-04 ("Ordinance"), as amended by Nashville Ordinance No. 2017-07 (collectively, the "Regulatory Ordinances"), and he supported the Parties' agreements in the Phase 2 Settlement.

Mr. Baker testified he was familiar with the Regulatory Ordinances and with the area in Brown County, Indiana, known as Firecracker Hill and referenced in the Phase 2 Settlement as the "Area." Based on his review of the Regulatory Ordinances and knowledge of BCW's system, Mr. Baker testified he does not believe the Regulatory Ordinances apply to or prohibit BCW's provision of water service to the Area. More specifically, Mr. Baker stated Section 9 of the Ordinance reads, in part, as follows:

This Ordinance is not in any way intended to (i) curtail the service of other utilities that have pipes in the ground with sufficient capacity to serve those properties; or (ii) include any areas within the Town of Nashville Water Service Area that are already served by other water utilities. (Baker's emphasis deleted)

Petitioner's Ex. 7, p. 2. According to Mr. Baker's settlement testimony, on or before May 15, 2017, when the Ordinance was approved, BCW had pipes in the ground adjacent to Firecracker Hill with the capacity to serve the Area; consequently, he does not believe the Ordinance prohibits BCW from providing water service to the Area. Petitioner's Ex. 7, p. 2.

Mr. Baker testified that Nashville currently purchases most of its water for resale from BCW. Under the Phase 2 Settlement, BCW will render water service to the Area through BCW's meters by replacing Nashville's meters. He testified BCW will prospectively provide customers in the Area with water service pursuant to BCW's approved tariff instead of Nashville continuing to render this service. Mr. Baker stated that BCW will deliver the water for its service to the Area to Nashville at its established connection points with Nashville's system. Nashville will then deliver the water to BCW's meters serving the Area. Nashville will not charge BCW for the water, or for the transportation of the water, that Nashville delivers to these BCW meters. BCW will, in turn, read its meters serving the Area and will not charge Nashville for the amount of water BCW sells to Firecracker Hill customers. Mr. Baker testified that BCW will share equally with Nashville all the water service revenues BCW receives for water service to current and future customers in Firecracker Hill after BCW deducts the cost of water sold to customers in the Area. He stated BCW will maintain and repair the service line that runs from the main tap on Nashville's main on Old State Road 46 to BCW's meters serving the Area, with Nashville and BCW to equally share the costs and expenses to maintain and repair this service line.

Mr. Baker testified the technical aspects of BCW's proposed service to the Area are easily accomplished at little cost, create no duplication of facilities, and are reasonable.³ Mr. Baker also opined that the proposed revenue and cost sharing aspects of the arrangement will benefit the customers of both Nashville and BCW, are easily implemented, and are reasonable.

Mr. Baker testified he had reviewed the provisions of the Phase 2 Settlement dealing with BCW's COSS and rate design, and he believes the agreed resolution of these issues represents a fair compromise, takes a reasonable step toward eliminating subsidy/excess, mitigates rate shock, and is generally reasonable. Mr. Baker stated the Phase 2 Settlement is reasonable for the Parties, serves the public interest, and should be approved.

C. **Jane Gore.** Nashville witness Gore also provided testimony supporting the Phase 2 Settlement. She reviewed the terms of the Phase 2 Settlement regarding service to current and future water customers in the Area and the related revenue sharing Nashville and BCW have agreed upon. In summarizing the Phase 2 Settlement, Ms. Gore testified that Nashville and BCW have agreed current and future customers in the Area shall be customers of BCW for water utility service and customers of Nashville for fire suppression service. Nashville will continue providing necessary fire suppression service because BCW is unable to render this service. She stated that because Nashville's lone customer within the Area, Big Woods, is already connected to Nashville's system and to avoid duplicating facilities, BCW will install its meters in place of Nashville's existing meters, with Nashville to be entitled to review and separately read such meters, and BCW will supply water to the current and future customers in the Area through Nashville's system.

Ms. Gore testified that Nashville and BCW have agreed BCW will not bill Nashville for any water Nashville receives from BCW to serve the Area. Ms. Gore stated BCW and Nashville will share all water service revenue BCW receives for water utility service to current and future customers in the Area after BCW deducts the cost of water sold to such customers. In addition, she testified BCW and Nashville have agreed BCW will maintain and repair that portion of pipe which extends from the tap on Nashville's main on Old State Road 46 to BCW's meter or meters in the Area and will share equally BCW's actual costs and expenses to maintain and repair this service line.

According to Ms. Gore, the Parties agreed to the arrangement she described because this proceeding is occurring simultaneously with the Federal Litigation between BCW and Nashville concerning who should provide water service to the Area. She testified that Nashville and BCW

³ In response to questions at the hearing, Mr. Baker testified that on May 15, 2017, when the Ordinance was passed, BCW had a two-inch line serving the property adjacent to Firecracker Hill. Tr. p. B-10-11. This two-inch line did not have the capacity to meet the maximum flow requested for Firecracker Hill. Tr. p. B-11. This line was not adequate to serve BCW's existing customers, Tr. p. B-12, but in August 2017, BCW installed a six-inch line to replace the two-inch line. Tr. p. B-11. At the hearing, Mr. Baker did not recall the cost of the new line installation or the length of six-inch line BCW installed. Tr. p. B-12. The new line, like the two-inch line that preceded it, ends near but before the Firecracker Hill property line. When Mr. Baker testified the technical aspects of BCW serving the Area "are easily accomplished at little cost," Petitioner's Ex. 7 at p. 4, and create no duplication of facilities, it appears he did not take into consideration BCW's new six-inch line or its cost, an omission we find was misplaced. BCW's new six-inch line was not shown to be necessary in 2017 when constructed absent BCW's quest to serve the Area, *see* Tr. p. B-12, and this line is not now needed, under the Phase 2 Settlement, to serve Firecracker Hill.

engaged in extensive settlement negotiations related to the Federal Litigation and considered several possible avenues to settlement. Ultimately, Ms. Gore stated Nashville and BCW agreed to the arrangement presented, and it has several benefits to the utilities and their customers including the following: (1) the Phase 2 Settlement allows these two utilities to share in the benefit of serving current and future customers in the Area by sharing equally in the revenues such customers generate, thereby preserving the current and future revenue streams for both utilities and spreading each utility's expenses over a potentially larger customer base; (2) the Phase 2 Settlement provides water service stability to Big Woods because this existing Area customer will not be required to disconnect from Nashville's system and connect to BCW's system, will continue to receive safe, reliable water service, and will continue to receive necessary fire suppression service; and (3) the Phase 2 Settlement and the Federal Settlement Agreement resolve this matter and the Federal Litigation, both of which have been very costly to the utilities.

Ms. Gore described the Regulatory Ordinances that Nashville adopted. She testified these ordinances established a regulated territory (the "Nashville Water Service Area") comprising certain areas within four miles of Nashville's corporate boundaries. According to Ms. Gore, the Nashville Water Service Area includes the Area. Ms. Gore testified the Commission approved the Regulatory Ordinances on February 7, 2018, in the 44944 Order, establishing an exclusive water service area for Nashville. Ms. Gore highlighted Sections 2, 3, and 9 of the Ordinance, stating that Section 9 makes clear that the Ordinance is not intended to curtail the service of other utilities having pipes in the ground with sufficient capacity to serve. Ms. Gore testified this is clarified in the last "WHEREAS" paragraph of the Ordinance under which the Nashville Water Service Area excludes any area where another utility has pipes in the ground and is ready, willing, and able to serve the property immediately adjacent thereto.⁴ She testified that to settle the Federal Litigation and this proceeding, Nashville and BCW have agreed BCW shall provide the water utility service and Nashville will provide fire suppression service to current and future Area customers. She testified this agreement reasonably concludes a lengthy and costly dispute over water service to Firecracker Hill. Ms. Gore stated the Parties engaged in arms-length negotiation of many complicated issues in the Federal Litigation and in this matter, and their negotiation resulted in several settlement agreements in both cases that fully resolve the Parties' issues. Ms. Gore testified

⁴ Section 9 states:

This Ordinance [Nashville Ordinance No. 2017-04] is not in any way intended to: (i) curtail the service of other utilities that have pipes in the ground with sufficient capacity **to serve those properties**; or (ii) include any areas within the Town of Nashville Water Service Area that are already served by other water utilities. Accordingly, the boundaries for the Town of Nashville Water Service Area have been **drawn to exclude areas in which other utilities have water pipes in the ground that are being used to serve customers in that area.** (emphasis added)

BCW's two-inch pipes were in the ground on the Reichman property, outside Firecracker Hill. Earlier in the Ordinance, the last "WHEREAS" provision references adjacent property, stating:

WHEREAS, the Town wishes to establish a specific water service territory in an area that is within four (4) miles of its corporate boundaries as permitted by Indiana law, excluding any area where another utility has pipes in the ground and is ready, willing, and able to serve the property immediately adjacent thereto.

In context, particularly with Section 9, the Commission finds the referenced immediately adjacent property is the property immediately adjacent to the pipes, i.e., the Reichman property where BCW had pipes "in the ground ..." BCW could adequately serve the Reichman property where its two-inch pipes were located when the Ordinance was passed. That property was, thus, appropriately excluded from the Area, but BCW's system is not designed to provide the fire suppression service needed to the Area, and its two-inch pipes providing service in May 2017 when the Ordinance was passed could not have met the Area's maximum requested flow.

that absent these agreements, both cases would have been fully litigated, including BCW's revenue requirement, the COSS/rate design issues, and the service territory issues, causing substantial legal expenses to be incurred and substantial resources expended.

Ms. Gore testified the Phase 2 Settlement is in the public interest, and she recommended the Commission approve the Phase 2 Settlement. According to Ms. Gore, the Parties' various agreements, especially the agreements regarding service to the Area, will provide stability and predictability of service to customers in the Area.

D. Margaret Stull. OUCC witness Stull provided settlement testimony supporting the Phase 2 Settlement. She testified the public interest will be served if the Commission approves the Phase 2 Settlement.

Ms. Stull testified the Parties agreed to the rate design set forth in Attachment 4-B to Petitioner's Exhibit 3 but with modifications that result in a gradual implementation of cost-based rates to some customer classes. She stated the customer class rate increases the Parties agreed upon to implement the revenue requirement approved in Phase 1 are as follows:

Residential	(1.25%)
Small Commercial	35.56%
Wholesale	34.00%

Ms. Stull testified that as part of the Phase 2 Settlement, BCW agreed to provide certain notice to Nashville about BCW's future general rate case filings and, if BCW's rate request will involve a COSS or rate design other than across-the-board, to make BCW's rate consultant available to meet with Nashville's rate consultant. Further, if BCW decides to request emergency rate relief, BCW will notify Nashville as soon as possible of its need for such relief.

Ms. Stull also testified concerning the agreements between BCW and Nashville regarding BCW prospectively providing water service to the disputed territory, i.e., to the Area. She testified upon the terms and conditions of this agreed arrangement, noting that under the Federal Settlement Agreement, Nashville will provide fire suppression service to the Area notwithstanding BCW's provision of water service.

Ms. Stull stated the Phase 2 Settlement addresses the Regulatory Ordinances the Commission approved on February 7, 2018, noting the Ordinance is not intended to "curtail the service of other utilities that have pipes in the ground with sufficient capacity to serve those properties" According to Ms. Stull, because BCW had a pipe immediately adjacent to the Area when the Ordinance was approved and had sufficient capacity to serve current and future customers in Firecracker Hill, the Phase 2 Settlement is consistent with the terms of Nashville's Regulatory Ordinances.

Ms. Stull testified the Phase 2 Settlement represents a compromise the Parties support as fair, reasonable, and beneficial to the utility and its customers. She opined that the Phase 2 Settlement is in the public interest because the agreed rate design moves customers closer to cost-based rates while avoiding rate shock. Ms. Stull testified that while residential customers will still

be subsidizing other customer classes, under the Phase 2 Settlement this subsidy is reduced, and residential customers will experience a slight rate decrease. She testified the specific agreements between Nashville and BCW allow for certainty and avoid costly litigation; therefore, the Phase 2 Settlement should be found to be in the public interest.

6. **Docket Entry Information.** In connection with Phase 2, three docket entries were issued to elicit clarifying or additional information. The Parties' responses to these docket entries were admitted at the hearing and are discussed below.

A. **December 11, 2019 Docket Entry Responses.** In responding to the docket entry issued on December 11, 2019, BCW stated that on February 7, 2018, i.e., the date the 44944 Order was approved, BCW had no customers in the Area. BCW stated it had pipes in the ground in the Nashville Water Service Area from which Petitioner was serving Nashville with wholesale water and pipes in the ground immediately adjacent to the Area on the Reichman property, with BCW's six-inch line on the Reichman property ending at the Area property line. BCW stated its pipes on the Reichman property had sufficient capacity to serve "the water needs of Firecracker Hill development."⁵ Joint Response to December 11, 2019 Docket Entry, BCW Response 4, p. 2.

BCW further stated that the Phase 2 Settlement summarizes the evidence "and presents the agreement of Petitioner and Nashville" that BCW providing service to the Area does not violate the Regulatory Ordinances. *Id.*, BCW Response 5, p. 3. BCW addressed why it believes the notice given to its customers was adequate notice to approve the Phase 2 Settlement, stating that Petitioner's notice to customers fairly advised its customers that BCW is seeking: (a) a rate increase; (b) the amount of the proposed increase; (c) approval of a COSS; (d) approval of a rate design; (e) the impact upon customer classes if the rate increase and rate design are approved; (f) the time and place of the public hearing; and (g) who customers can contact with questions or comments. BCW opined this notice was adequate for approval of the Phase 2 Settlement, but "if the Commission believes the Petition should be amended, Petitioner will certainly do so."⁶ *Id.*

In addressing the basis for deviating in the Phase 2 Settlement from Mr. Foley's COSS, BCW stated the Parties agreed a negotiated resolution is preferable to the expense, delay, and uncertainty of a litigated resolution, and the agreed rate design meets the Parties' objective of moving rates closer to being cost-based but doing so gradually to mitigate rate shock. BCW also stated the Parties believe the agreed rate design is supported by the evidence and is reasonable. *Id.*

In responding to the December 11, 2019 docket entry, Nashville initially stated it annexed a portion of the Area by Ordinance No. 2017-02 adopted on April 20, 2017, with that annexation becoming effective on January 3, 2018. The morning of the Phase 2 hearing, Nashville supplemented this response by advising the remainder of the Area was annexed by Ordinance No.

⁵ In answering questions at the hearing, Mr. Baker clarified BCW had a two-inch line on the Reichman property when Nashville passed the Ordinance on May 15, 2017. Tr. p. B-10. BCW later installed a six-inch line in August 2017 that replaced the two-inch line. Tr. p. B-11-12.

⁶ As discussed above in footnote 2, BCW was repeatedly alerted that its petition and the notice for the public hearings in this Cause reflected only rate case related relief is at issue. Neither referenced modifying Nashville's water service or resolving a territorial dispute regarding water service to Firecracker Hill. It is BCW's responsibility to assure its petition includes the relief BCW wants approved, not shift this responsibility to the Commission, ignoring footnote 1 in the Phase 1 Order as well as the attorneys' conference discussions preceding this footnote.

2017-09, adopted on September 21, 2017, with this annexation also becoming effective on January 3, 2018. According to Nashville's original responses, the Area as of January 3, 2018, was completely located within Nashville's Water Service Area as defined in the Regulatory Ordinances, i.e., Nashville Ordinance Nos. 2017-04 and -07. In its supplemental response, Nashville claimed that "although such water service is within Nashville's Water Service Area, it is now located inside Nashville's corporate boundaries and is no longer located in the regulated territory as that term is defined in Ind. Code § 8-1.5-6-2." *Id.*, Nashville Response 9, p. 4 and Nashville Supplemental Response 9, p. 2.⁷ Nashville stated that it owns the service line referenced in the Phase 2 Settlement between its main and the meters serving Red Truck, LLC, the existing Area customer. If the Phase 2 Settlement is approved, Nashville will continue to own this service line, but instead of Nashville maintaining this line, under the Phase 2 Settlement, BCW will maintain and repair the service line with Nashville and BCW equally sharing these costs. Nashville stated the Ordinance does not define the term "end service user." Nashville believes Red Truck, LLC would, however, be considered an end service user under the Ordinance.⁸ Finally, Nashville stated that as agreed by the Parties in the Phase 2 Settlement, the connection of Red Truck, LLC to a BCW meter does not violate Section 4 of the Ordinance because Section 9 states the Ordinance is not intended to "curtail the service of other utilities that have pipes in the ground with sufficient capacity to serve those properties," and BCW and Nashville have agreed for purposes of settlement that BCW had a pipe immediately adjacent to Firecracker Hill when the Ordinance was approved.

BCW and Nashville state they have reached a comprehensive settlement that settles "the rate and territory disputes" in this Cause and in the Federal Litigation, bringing very costly and resource-consuming litigation to a conclusion. *Id.*, BCW and Nashville Response 13, p. 5. They further state that if the Commission rejects the settlement, litigation will resume in this case and the Federal Litigation because, as indicated by the settlement, the agreed rate design is the result of compromise and is without prejudice to and does not constitute a waiver of any party's position, with the Parties supporting the reasonableness of the rate design agreed upon. *Id.*, pp. 5-6.

In its response, the OUCC referenced Ms. Stull's settlement testimony as explaining why the Phase 2 Settlement, including the rate design Mr. Foley calculated, should be approved. It was

⁷ In contrast to Nashville's docket entry responses, at the hearing, the following exchange occurred between the Presiding Administrative Law Judge and Nashville witness Gore:

Q And when you refer to the annexation, based on the supplemental responses filed this morning, is all of Firecracker Hill currently within the corporate boundaries of the Town of Nashville?

A Yes, it is.

Q Now, Ms. Gore, turning to Nashville's Exhibit 3, specifically the response to Item 9 –

A Yes.

Q --can you clarify Nashville's position as to whether Firecracker Hill remains within the regulated territory today?

A It does, yes.

Q So as those Ordinances were passed, it is still within that territory?

A Yes.

Tr. B-32-33.

⁸ Section 4 of Ordinance No. 2017-04 prohibits any end service user from connecting to potable water service from a provider other than Nashville, stating:

No end service user shall permit a connection to potable water service within the Town of Nashville Water Service Area by any other water service provider.

noted the OUCC had not taken a position on the reasonableness of applying this rate design outside the context of the total settlement, but the OUCC considers the rate design to be reasonable since it moves the residential class closer to cost-based rates while avoiding rate shock to BCW's wholesale customer.

B. December 17, 2019 Docket Entry Responses. In responding to the docket entry issued on December 17, 2019, BCW addressed why the total water usage shown for Nashville was different in the rate schedules and the COSS. BCW stated the COSS was based on the 12 months ending December 31, 2017, whereas the test year for the rate study was the 12 months ending June 30, 2018. BCW also provided an example of how the revenue sharing Nashville and BCW agreed upon in Section 1.4 of the Federal Settlement Agreement is to be calculated. BCW stated that as defined in Section 1.4.B., the cost of water sold shall be calculated as the weighted average of BCW's actual cost to purchase treated water and its actual cost to obtain and treat water from its own sources of supply, weighted according to the relative percentage of purchased water and produced water in BCW's system and calculated and provided to Nashville annually no later than April 30th. BCW provided an example calculation based on Petitioner's 2018 Annual Report. BCW also provided a revenue proof and proposed tariff. The revenue proof was based on the 12 months ending December 31, 2017, from class usage information previously compiled and available from the COSS.

In the OUCC's response to the December 17, 2019 docket entry, the OUCC stated the water loss values BCW submitted in its Annual Reports as compared to the Unaccounted for Water Compliance Filings that BCW makes quarterly to comply with the Order approved in Cause No. 43203 on October 17, 2007, show a slight discrepancy for the years 2016 and 2017. The data in the Annual Reports shows a decrease in water loss over time, but the Unaccounted for Water Compliance Filings show an increase in water loss; therefore, the OUCC stated the OUCC continues to consider the reporting requirement ordered in Cause No. 43203 useful for the OUCC's knowledge and to encourage BCW to continue its efforts to reduce unaccounted for water.

C. December 26, 2019 Docket Entry Responses. BCW stated the revenue proof Petitioner provided was based on 2017 usage because necessary usage data for the test year ending June 30, 2018, was not available. According to BCW, the 2017 usage data serves as a suitable surrogate given the lack of known or significant expected differences in usage characteristics between 2017 and the test year for BCW's residential and small commercial classes. BCW stated that Petitioner understood the increased usage by its wholesale class during 2018 was to some extent attributable to significant, but temporary, leaks the wholesale customer experienced within its system. BCW provided an overview of adjustments made in the revenue proof calculation.

7. Presiding Officers' Questions. At the evidentiary hearing, the Parties waived cross-examination of all witnesses, but the Presiding Officers posed questions to BCW's witness Baker and Nashville's witness Gore.

Mr. Baker testified that BCW had no customers within Firecracker Hill on February 7, 2018, when the 44944 Order was issued approving the Regulatory Ordinances and is not providing water service there today. Tr. p. B-9. He confirmed that BCW had no pipes within Firecracker Hill

on May 15, 2017, but Petitioner had pipes in property adjacent to the Area. Tr. p. B-10. He clarified that when Nashville passed the Ordinance on May 15, 2017, BCW had a two-inch pipe in the Reichman property adjacent to Firecracker Hill, later installing a six-inch pipe in this adjacent property in August 2017. Tr. pp. B-10-11. Mr. Baker acknowledged BCW's two-inch pipe did not have the capacity to serve the Firecracker Hill customer's ultimate request for maximum flow. Tr. p. B-11. When asked whether the two-inch pipe was adequately serving BCW's existing customers when the six-inch pipe was installed, Mr. Baker testified the two-inch pipe was probably close to its maximum capacity. Tr. p. B-12.

In follow up to the OUCC's response to the December 17, 2019 docket entry, Mr. Baker was asked about BCW's water loss. Mr. Baker testified he believes the water losses shown in BCW's Annual Reports are correct, with water loss decreasing. Tr. pp. B-13-14.

Mr. Baker was also asked about the Federal Settlement Agreement. He agreed the Federal Settlement Agreement characterizes the Federal Litigation as a territorial dispute, whereas this Commission proceeding is referenced in that agreement as a wholesale rate disagreement. When asked if these are different types of proceedings, Mr. Baker testified in his opinion, "they go hand in hand." Tr. p. B-15. Mr. Baker agreed that Section 1.5 of the Federal Settlement Agreement states how BCW and Nashville have agreed to resolve this matter with Section 1.5.A. stating BCW and Nashville have agreed Nashville's wholesale increase in this matter will be 34%. Tr. p. B-16. Mr. Baker testified that under Section 1.5.B., BCW is to give Nashville advance notice of future general rate cases, and he agreed Section 1.5.C. reflects acceptance of the Parties' agreement upon rate design. Tr. pp. B-16-17. When asked whether, if the Commission issues an order that is consistent with all the items in Section 1.5, BCW will dismiss the Federal Litigation, Mr. Baker replied no, because that does not pertain to the disputed area. Tr. p. B-17. Mr. Baker agreed on the requirements in Section 1.5, but he testified other agreements were made to get to that point, and all the agreements must be considered rather than just the requirements BCW and Nashville agreed upon in Section 1.5 to settle this rate case proceeding. Tr. pp. B-17-22.

Mr. Baker testified he did not know the amount of legal expenses BCW has incurred in 2019, but he stated BCW will not be recovering any of its legal fees from Nashville under the current settlement.

Ms. Gore clarified that Nashville annexed Firecracker Hill in two parts, identifying on a map the areas within Firecracker Hill associated with each annexation ordinance. Tr. p. B-32. She stated all of the Area is now within the corporate boundaries of Nashville. Ms. Gore testified that it is Nashville's position the Area remains today within the regulated territory, so notwithstanding the annexation ordinances, the Area is still within that territory. Tr. p. B-33. Ms. Gore stated that within Firecracker Hill, there is one customer, but she believes there are multiple meters because that customer takes water at different locations. She stated the customer may be Hard Truth Hills, Red Truck, or Big Woods because a number of corporations are involved. Tr. p. B-33-34. Ms. Gore confirmed she has talked with one of this customer's owners about changing the water service provider and assured this customer there will be no break in service. She stated this customer relayed no concerns about this change and was "just happy that it was over." Tr. p. B-34.

8. **Commission Discussion and Findings.** As the Commission has previously discussed, 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 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 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. v. Public Service Co.*, 582 N.E.2d 330, 331 (Ind. 1991)). The Commission’s procedural rules require that settlements be supported by probative evidence. 170 IAC 1-1.1-17(d). Before the Commission can approve the Phase 2 Settlement, the Commission must determine whether the evidence in this Cause sufficiently supports the conclusion that the Phase 2 Settlement is reasonable, just, and consistent with the purpose of Ind. Code ch. 8-1-2 and that such agreement serves the public interest.

The Federal Settlement Agreement provides, and the Phase 2 Settlement contemplates in Sections 4 and 5, that BCW will prospectively provide the water service for the Area. The propriety of BCW providing such service is not, however, before the Commission, notwithstanding Mr. Baker’s testimonial ultimatum to the contrary. BCW has not petitioned the Commission to approve its service to the Area, and Nashville has not petitioned to modify the 44944 Order, perhaps because Ind. Code § 8-1.5-6-9(e) does not permit such a modification earlier than five years after the 44944 Order was issued. The Parties have also not filed for relief under Ind. Code § 8-1.5-6-10 to resolve a dispute concerning a regulated territory. In the absence of a petition and notice thereof, the Commission is precluded in this proceeding from approving a mutual agreement between utilities resolving disputed service territory. *See* Ind. Code § 8-1.5-6-10(e). The Parties did not seek Commission approval of BCW’s provision of water service to the Area, yet they ask the Commission to approve the Phase 2 Settlement which in part states:

A. BCW will meter all water sold to current and future customers within the Area. ... Nashville will not bill BCW for the water delivered to BCW’s meter (or meters) used to supply service to any current and future customers in the Area or for the delivery of said water.

5.

In the Federal Settlement, solely for the purpose of resolving the federal and Commission causes, Nashville and BCW agreed that current and future customers in the Area shall be customers of BCW for water utility service and customers of Nashville for fire suppression service. Because BCW has a pipe immediately adjacent to the Area at the time the Regulatory Ordinance was approved and BCW has sufficient capacity to serve current and future customers in the Area, Nashville’s and BCW’s agreement in the Federal Case is consistent with the terms of Nashville’s Regulatory Ordinance.

Phase 2 Settlement, pp. 3-4.

While BCW claims this language is simply a “factual stipulation” that BCW’s provision of water service is consistent with Nashville’s Regulatory Ordinances as opposed to a request for affirmative relief, BCW Responses to December 11, 2019 Docket Entry, Response 5, p. 3, the Commission disagrees. We will not be complicit in: (a) rendering a decision, directly or indirectly, upon a territorial dispute that is not properly before us; (b) approving an interpretation of the Ordinance with which the Commission disagrees; or (c) tacitly sanctioning Nashville’s nondisclosure in Cause No. 44944 about its passage of two annexation ordinances. We find Mr. Baker’s claim that the Phase 2 Settlement must be approved in its entirety incredulous given the limited relief his employer, BCW, petitioned the Commission to approve in this Cause. BCW’s prospective provision of water service to the Area is not consistent with the Regulatory Ordinances or the 44944 Order, and the Commission declines the Parties’ invitation to pretend or find otherwise under the guise that this is needed to end the Federal Litigation. In so finding, however, the Commission recognizes BCW and Nashville have agreed upon BCW’s prospective service to the Area, and their private agreements are included in Sections 4 and 5 of the Phase 2 Settlement and in the Federal Settlement Agreement, the latter of which is subject to approval in the Federal Litigation.

From our perspective, with the issuance of this Order resolving the rate related items set forth in Section 1.5 of the Federal Settlement Agreement, the Commission will have approved everything required under the Federal Settlement Agreement to dismiss that action; therefore, our approval of the rate design should be acceptable to BCW and Nashville to jointly dismiss the Federal Litigation without delay. *See* Federal Settlement Agreement, Section 1.6.A. The Parties did not condition their agreements in the Phase 2 Settlement upon Commission approval of that agreement in its entirety nor does the Phase 2 Settlement, based upon its terms, become null and void if not approved in its entirety by the Commission. While it is tempting to approve the entire Phase 2 Settlement, the Commission will approve only those provisions related to BCW’s rates and rate design. BCW and Nashville’s service and metering agreements are their private agreements upon these matters to which both appear bound under Article 3 of the Federal Settlement Agreement. BCW and Nashville’s “territorial dispute” is pending in the Federal Litigation. Resolution of BCW’s wholesale rate is properly before the Commission, Federal Settlement Agreement, Recital C., p. 1; consequently, with the wholesale rate matters approved below and their private agreements in hand, the Federal Litigation should linger no longer. The Regulatory Ordinances rest with Nashville to enforce, *see* Ind. Code § 8-1.5-6-9 (b), and Nashville has, effectively, agreed otherwise.

The Commission has before it substantial evidence from which to determine the reasonableness of the rate design and rate case related terms of the Phase 2 Settlement. Initially, BCW presented evidence supporting the COSS and rate design relief Petitioner originally requested. After the Parties agreed to bifurcate this proceeding and entered into the Phase 2 Settlement, the Parties prefiled evidence supporting the reasonableness of their agreed rate design in Section 2 of the Phase 2 Settlement, as well as the Phase 2 Settlement provision (Section 3) requiring BCW to provide Nashville with notice of future rate cases. The Commission finds this evidence, combined with the Parties’ docket entry responses admitted at the hearing, demonstrates

the Parties' proposed rate design is an informed compromise supported by the range of the evidence, moves BCW's rates closer to being cost-based, mitigates rate shock, and is reasonable.

In the Phase 2 Settlement, the Parties request no particular COSS be approved. Instead, they proposed the rate increase the Commission approved in Phase 1 be allocated as follows:

Residential	(1.25%)
Small Commercial	35.56%
Wholesale	34.00%

BCW was subsequently requested in the docket entry issued on December 17, 2019, to provide a proposed tariff and revenue proof reflecting the Parties' agreed rate design. The revenue proof BCW provided in response was revised in BCW's response to the docket entry issued on December 26, 2019, and evidenced the following slightly different rate design:

Residential	(2.59%)
Small Commercial	35.56%
Wholesale	34.00%

Based on additional information BCW provided, this difference was attributable to several factors, including the Phase 1 settlement adjustments, BCW's elimination of standby charges, and the impact of the deferred true-up. Neither the OUCC nor Nashville objected to BCW's slightly revised rate design. Given the updated information BCW incorporated when providing the revenue proof, the Commission finds BCW's inputs and the methodology used to provide that proof were reasonable and appropriate; consequently the Commission finds the revised rate change reflected in the revenue proof is in the public interest and is approved. We also find that in future rate proceedings, Petitioner's case-in-chief shall include a proposed tariff and revenue proof and complete workpapers for all elements of any COSS. Per the Phase 2 Settlement, no particular COSS is approved in this matter.

The Parties also agreed in the Phase 2 Settlement that BCW will provide Nashville with certain advance notice of BCW's future general and emergency rate case filings and will make its rate consultant(s) available to meet with Nashville's rate consultant(s) upon request if a COSS/rate design other than across-the-board is requested. The Commission finds this agreement to be reasonable, especially given the concurrence of BCW and Nashville upon the agreed future rate case notice. The evidence shows Nashville is BCW's only wholesale customer. The Parties' agreement to afford this customer notice of prospective rate filings is reasonable and will potentially nurture a more positive relationship between these two utilities and is, therefore, approved.

Consistent with the Commission's discussion above and the evidence presented, the Commission finds the Parties' rate design and rate case related agreements are in the public interest, and the provisions of the Phase 2 Settlement reflecting these terms and conditions are approved; consequently, the Phase 2 Settlement, a copy of which is attached to this Order, is approved, exclusive of Sections 4 and 5. The Commission takes no action on Sections 4 and 5 consistent with our findings above that these provisions contain private agreements between BCW

and Nashville which are not before us for action in this rate case proceeding. From our perspective, with the issuance of this Order, the Commission has approved everything required under the Federal Settlement Agreement and everything that the Commission may properly act upon in this matter.

9. **BCW's Quarterly Unaccounted for Water Reports.** In the Settlement Agreement approved on October 17, 2007, in Cause No. 43203, BCW agreed to submit quarterly reports regarding Petitioner's unaccounted for water. The duration of this reporting was not set. In a docket entry issued on December 17, 2019, the OUCC was asked whether, from the OUCC's perspective, this reporting requirement should remain in effect, be modified, or be discontinued. In responding to this docket entry, the OUCC indicated this reporting requirement remains useful for the OUCC and to encourage BCW to continue its efforts to reduce unaccounted for water. The Commission finds that after 12 years, there should no longer be a discrepancy between these quarterly filings and BCW's Annual Reports with respect to BCW's water loss. It is incumbent upon BCW to assure its Annual Reports accurately reflect Petitioner's water loss; however, because the OUCC requested the quarterly reporting requirement remain in place, the Commission finds this reporting requirement will not be terminated at this time; provided, BCW is directed to diligently work to determine why any discrepancy continues to exist between the quarterly reports and its Annual Reports and to take the steps needed to assure its water loss is accurately shown in BCW's Annual Reports, with the quarterly water loss reports to terminate at the end of 2020 unless the OUCC files an objection in Cause No. 43203 prior to such termination demonstrating why the quarterly reports should continue.

10. **Use of Settlement Agreement.** The Parties agreed if the Phase 2 Settlement was approved by the Commission, it 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 Phase 2 Settlement outside this Cause, excluding Sections 4 and 5 of said 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 Phase 2 Settlement, a copy of which is attached, through and including Section 3 on page 3 and Sections 6 and 7, which commence on page 4, through the executed signature pages, is approved, consistent with Finding No. 9 above. The Commission takes no action upon Sections 4 and 5 of the Phase 2 Settlement as these territorial and/or service matters are outside the issues before the Commission.

2. The rate design for Petitioner is approved consistent with Finding No. 9 above, and the interim rates approved in Phase 1 shall be implemented consistent with the approved rate design.

3. Prior to implementing the rate design approved, Petitioner shall file the tariff and applicable rate schedules under this Cause for approval by the Commission's Water/Wastewater

Division. Such rate design shall be effective on or after the Order date subject to the Division's review and agreement.

4. In future rate proceedings, BCW shall include a proposed tariff and revenue proof in its case-in-chief and complete workpapers for all elements of any COSS consistent with Finding No. 9.

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

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

APPROVED: APR 29 2020

**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

IN THE MATTER OF THE PETITION OF)
 BROWN COUNTY WATER UTILITY, INC., OF)
 MORGANTOWN, INDIANA, FOR (1) THE)
 AUTHORITY TO INCREASE ITS RATES AND)
 CHARGES FOR WATER SERVICE, (2) FOR) CAUSE NO. 45210
 APPROVAL OF A COST OF SERVICE STUDY)
 AND RATE DESIGN, AND (3) FOR APPROVAL)
 OF A NEW SCHEDULE OF RATES AND)
 CHARGES FOR WATER SERVICE.)

PHASE 2 STIPULATION AND SETTLEMENT AGREEMENT

Brown County Water Utility, Inc. (“BCW” or “Petitioner”), Town of Nashville, Indiana (“Nashville”), and the Indiana Office of Utility Consumer Counselor (“OUCC”), being all of the parties to this Cause (collectively called the “Parties”), stipulate and agree for the purposes of resolving the issues in Phase 2 in this Cause to the terms and conditions set forth below (which terms and conditions are collectively referred to herein as the “Settlement”).

1. Background. The Parties agreed to, and the Commission approved, the bifurcation of this Cause into two Phases. BCW’s revenue requirement request was heard and is being considered in Phase 1. Phase 2 of this Cause was to deal with the Cost of Service Study (“COSS”) and Rate Design issues. The Phase 1 record, and Phase 1 Settlement Agreement, acknowledged that BCW and Nashville were involved in a territory dispute in Federal Court (“Federal Case”). The Commission’s August 27, 2019, Docket Entry in this Cause and the Phase 1 Settlement Agreement also acknowledged the possible settlement of the Federal Case and that certain aspects of the Federal Case settlement might require Commission approval. On October 22, 2019, BCW and Nashville entered into an Agreement of Settlement (“Federal Case Settlement”), which resolves the Federal Case, and BCW’s and Nashville’s Phase 2 issues, subject to Commission approval. The Federal Case Settlement resolves BCW’s and Nashville’s

COSS/rate design issues in Phase 2 of this Cause. It also resolves the Federal Case by providing that BCW will serve the disputed territory described in the Federal Case Settlement as the “Area,” and it sets forth the terms and conditions of BCW’s service to the Area. A copy of the Federal Case Settlement is attached to Darrell Baker’s Phase 2 Settlement Testimony, Petitioner’s Exhibit No. 7. The OUCC was not a party to the Federal Case or to the Federal Settlement.

2. **COSS/Rate Design.** The Parties acknowledge and agree that rates and charges for water service provided by BCW to its customers should be designed in order to allocate the approved revenue requirement between and among the classes of BCW’s customers in a fair and reasonable manner consistent with general cost-causation principles. Had this Cause proceeded to a full evidentiary hearing on the issue, the Parties were prepared to present evidence in this proceeding utilizing different cost-of service and rate design proposals, supporting a range of possible outcomes. Through a process of discussion, sharing information, and arms’ length negotiation, the Parties have reached an agreement regarding an appropriate rate design.

The Parties stipulate and agree that BCW’s revenue requirement, assuming approval of the agreed-upon Phase I rate increase, shall be allocated as follows:

Residential	(1.25)%
Small Commercial	35.56%
Wholesale	34.00%

The Parties agree that in light of the proposed and agreed upon rate design and allocation among customer classes, the various COSS and allocation disputes between the Parties are moot. Therefore, the Parties request that the Commission not issue a finding approving any particular COSS. The Parties agree that the Settlement does not impair any of the Parties’ rights to

advocate in future proceedings for a COSS and rate design different from those in this Settlement.

3. **Future General Rate Case Filings.** The Parties stipulate and agree that BCW shall provide Nashville with advance notice of future IURC general rate case filings. Specifically, BCW shall notify Nashville of its decision to seek rate relief within 30-days of its decision to do so. If BCW decides to request emergency rate relief from the IURC, BCW shall notify Nashville as soon as possible of BCW's need for emergency rate relief. If BCW's rate request will involve a COSS/rate design which would result in rate implementation other than across-the-board, BCW agrees to make its rate consultant(s) available to meet with Nashville's rate consultant(s) upon request.

4. **BCW's Service to the Area.** BCW and Nashville stipulate and agree that BCW's Schedule of Rates and Charges shall be amended to provide for the following terms of BCW's service to the Area:

A. BCW will meter all water sold to current and future customers within the Area. Nashville shall be entitled to review and separately read any such meter. BCW supplies water to Nashville, but BCW will not bill Nashville for any water delivered by Nashville to BCW's meter (or meters) serving the Area and sold by BCW to any current and future customers in the Area. Nashville will not bill BCW for the water delivered to BCW's meter (or meters) used to supply service to any current and future customers in the Area or for the delivery of said water.

B. BCW will share all water service revenue equally with Nashville which BCW receives for water service to any current and future customer within the Area, after BCW deducts the cost of water sold¹ to any current and future customer in the Area.

¹ The cost of water sold shall be calculated as the weighted average of BCW's actual cost to purchase treated water and its actual cost to obtain and treat water from its own sources of supply, weighted according to the relative

C. BCW shall maintain and repair that portion of pipe which extends from the main tap, on Nashville's main on Old State Road 46, to BCW's meter (or meters) in, or serving, the Area ("Service Line"). Nashville and BCW shall share equally in the costs and expenses to maintain and repair the Service Line.

5. **Authority for BCW to Provide Service to the Area.** On February 7, 2018, the Commission approved Nashville's Ordinance No. 2017-04, as amended by Ordinance No. 2017-07 ("Regulatory Ordinance"), which established a regulated territory in certain areas within four miles outside of Nashville's boundaries, and provided Nashville the exclusive authority to serve customers within the regulated territory. Section 9 of the Regulatory Ordinance states that the ordinance is not intended to "curtail the service of other utilities that have pipes in the ground with sufficient capacity to serve those properties" In the Federal Case, Nashville and BCW disputed whether the Regulatory Ordinance properly included the Area.

In the Federal Settlement, solely for the purpose of resolving the federal and Commission causes, Nashville and BCW agreed that current and future customers in the Area shall be customers of BCW for water utility service and customers of Nashville for fire suppression service. Because BCW had a pipe immediately adjacent to the Area at the time the Regulatory Ordinance was approved and BCW has sufficient capacity to serve current and future customers in the Area, Nashville's and BCW's agreement in the Federal Case is consistent with the terms of Nashville's Regulatory Ordinance.

6. **Use of the Settlement.** If the Settlement is approved by the Commission, the Parties agree that the terms of the Settlement are intended to represent a resolution by compromise of the issues in this Cause. The Parties further agree that the provisions of the Settlement may never be

percentages of purchased water and produced water in BCW's system and calculated and provided to Nashville annually no later than April 30th of each year.

deemed an admission by any of the Parties, may never be used as substantive precedent in future Commission proceedings or related state or federal litigation, and may never be used against any of the Parties in subsequent regulatory or other Commission proceedings, except to the extent necessary to enforce the Settlement.

The Parties stipulate and agree that the Settlement 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 issue or item whether or not resolved herein, in any future regulatory or other proceeding.

7. **Authority to Execute.** The undersigned have represented and agreed that they are fully authorized to execute this Phase 2 Stipulation and Settlement Agreement on behalf of the designated Parties who will be bound thereby.

Brown County Water Utility, Inc.

By: _____
Ben Phillips, Petitioner's Board President

Date: _____

ATTEST:

By: _____
Roger Hickey, Petitioner's Secretary

Date: _____

Indiana Office of Utility Consumer Counselor

By: 
Scott Franson, Deputy Consumer Counselor

Date: November 12, 2019

Town of Nashville, Indiana

By: 
Jeffery A. Earl, Counsel for Nashville

Date: 12 November 2019

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Brown County Water Utility, Inc.

By: Ben Phillips
Ben Phillips, Petitioner's Board President

ATTEST:

By: Roger Hickey
Roger Hickey, Petitioner's Board Secretary