

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF CWA AUTHORITY, INC. FOR REVIEW)
OF CERTAIN AGREEMENTS FOR WASTEWATER)
TREATMENT AND DISPOSAL SERVICE WITH)
VARIOUS SATELLITE CUSTOMERS AND FOR)
REVIEW OF COST ALLOCATION ISSUES RELATED)
TO THOSE AGREEMENTS.)

CAUSE NO. 44685 S1

SETTLEMENT TESTIMONY OF


JEROME D. MIERZWA – PUBLIC’S EXHIBIT NO. 1

ON BEHALF OF THE

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR

MARCH 30, 2017

Respectfully submitted,


Leja D. Courter, Atty. No. 14720-27
Deputy Consumer Counselor

**BEFORE THE
INDIANA UTILITY REGULATORY COMMISSION**

**PETITION OF CWA AUTHORITY, INC. FOR)
REVIEW OF CERTAIN AGREEMENTS FOR)
WASTEWATER TREATMENT AND DISPOSAL) CAUSE NO. 44685-S1
SERVICE WITH VARIOUS SATELLITE)
CUSTOMERS AND FOR REVIEW OF COST)
ALLOCATION ISSUES RELATED TO THOSE)
AGREEMENTS.)**

**VERIFIED TESTIMONY
IN SUPPORT OF SETTLEMENT**

of

JEROME D. MIERZWA

On Behalf of

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR

March 30, 2017

I. INTRODUCTION

1
2 **Q. WOULD YOU PLEASE STATE YOUR NAME AND BUSINESS ADDRESS?**

3 A. My name is Jerome D. Mierzwa. I am a principal and Vice President of Exeter
4 Associates, Inc. ("Exeter"). My business address is 10480 Little Patuxent Parkway,
5 Suite 300, Columbia, Maryland 21044. Exeter specializes in providing public utility-
6 related consulting services.

7 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND**
8 **EXPERIENCE.**

9 A. I graduated from Canisius College in Buffalo, New York, in 1981 with a Bachelor of
10 Science Degree in Marketing. In 1985, I received a Master's Degree in Business
11 Administration with a concentration in finance, also from Canisius College. In July
12 1986, I joined National Fuel Gas Distribution Corporation ("NFG Distribution") as a
13 Management Trainee in the Research and Statistical Services Department ("RSS").
14 I was promoted to Supervisor RSS in January 1987. While employed with NFG
15 Distribution, I conducted various financial and statistical analyses related to the
16 Company's market research activity and state regulatory affairs. In April 1987, as part
17 of a corporate reorganization, I was transferred to National Fuel Gas Supply
18 Corporation's ("NFG Supply") rate department where my responsibilities included
19 utility cost of service and rate design analysis, expense and revenue requirement
20 forecasting and activities related to federal regulation. I was also responsible for
21 preparing NFG Supply's Purchase Gas Adjustment ("PGA") filings and developing
22 interstate pipeline and spot market supply gas price projections. These forecasts were
23 utilized for internal planning purposes as well as in NFG Distribution's purchased gas
24 cost proceedings.

1 In April 1990, I accepted a position as a Utility Analyst with Exeter Associates,
2 Inc. In December 1992, I was promoted to Senior Regulatory Analyst. Effective April
3 1, 1996, I became a principal of Exeter Associates. Since joining Exeter Associates,
4 my assignments have included water, wastewater, electric, and gas utility class cost of
5 service and rate design analysis, evaluating the gas purchasing practices and policies
6 of natural gas utilities, utility sales and rate forecasting, performance-based incentive
7 regulation, revenue requirement analysis, the unbundling of utility services and the
8 evaluation of customer choice natural gas transportation programs.

9 **Q. HAVE YOU PREVIOUSLY TESTIFIED IN REGULATORY PROCEEDINGS**
10 **ON UTILITY RATES?**

11 A. Yes. I have provided testimony on more than 200 occasions in proceedings before the
12 Federal Energy Regulatory Commission ("FERC"), utility regulatory commissions in
13 Delaware, Georgia, Illinois, Louisiana, Maine, Massachusetts, Montana, Nevada, New
14 Jersey, Ohio, Pennsylvania, Rhode Island, Texas, Utah and Virginia, as well as before
15 this Commission.

16 **Q. PLEASE PROVIDE A BRIEF HISTORY OF THIS PROCEEDING.**

17 A. In 2011, the wastewater utility assets of the City of Indianapolis ("City") that were
18 operated by the City's Department of Public Works were transferred to the CWA
19 Authority, Inc. ("CWA"). At the time of the transfer, the City provided wastewater
20 transportation and treatment service to seven Satellite customers pursuant to
21 individually negotiated contracts between the City and each Satellite customer. Those
22 contracts set forth the terms and conditions for the provision of wastewater service by
23 the City, and specified the extent to which the rates and charges to Satellite customers
24 could be increased. The City's contracts with the Satellite customers were transferred

1 to CWA with the transfer of the City's wastewater utility assets to CWA (Cause No.
2 43936).

3 On February 22, 2013, in Cause No. 44305, CWA filed a petition with the
4 Commission to increase its rates and charges for wastewater utility service. Cause No.
5 44305 was eventually resolved by two settlement agreements that were subsequently
6 approved by the Commission: (1) a Stipulation and Settlement Agreement on Revenue
7 Requirements entered into by CWA and the Indiana Office of Utility Consumer
8 Counselor ("OUCC"); and (2) a Stipulation and Settlement Agreement on Allocation
9 Issues entered into by the OUCC and the CWA Authority Industrial Group. In its Order
10 approving the settlement agreements, the Commission indicated:

11 We are troubled by the \$11.5 million-dollar subsidy that is
12 being imposed on the retail customer classes because the
13 contracted revenues from the Satellite customers do not
14 cover the cost to serve those customers. As we stated above,
15 rates should be allocated among customer classes in a fair
16 and reasonable manner. CWA's retail customer classes
17 should not be burdened with paying such a large portion of
18 the cost of serving the Satellite customers. We recognize
19 that CWA did not negotiate these contracts, and for that
20 reason, we have not made an adjustment to the COSS in this
21 case to remove the subsidy. But we order CWA to pursue
22 all possible means to renegotiate the Satellite customer
23 contracts to provide for the recovery of the cost of service
24 from those customers. In its next rate case, CWA shall
25 present evidence detailing the steps it has taken to pursue
26 renegotiation of the contracts and the results of such
27 negotiations. (Order, at 35).

28 CWA's next rate case was filed with the Commission on September 25, 2015,
29 in Cause No. 44685. CWA's filing requested, among other things, authority to increase
30 operating revenues from its rates and charges based on the results of a cost of service
31 study prepared by Black & Veatch, and the establishment of a subdocket proceeding to
32 address the Satellite customer subsidy and related cost allocation issues. On February

1 2, 2016, the Commission issued a Docket Entry establishing a subdocket (Cause No.
2 44685-S1) to consider the subsidy and cost allocation issues related to CWA's
3 provision of wastewater treatment service to the following Satellite customers: the City
4 of Beech Grove; the Ben Davis Conservancy District ("Ben Davis"); the Town of
5 Whitestown; the City of Greenwood ("Greenwood"); Hamilton Southeastern Utilities;
6 the City of Lawrence ("Lawrence"); and the Tri-County Conservancy District
7 (collectively "Satellite Customers"). Only Ben Davis, Greenwood, and Lawrence are
8 parties to Cause No. 44685-S1 (collectively, the "Intervenor Satellite Customers").
9 Cause No. 44685 was resolved by a Stipulation and Settlement approved by the
10 Commission on July 18, 2016 ("Cause No. 44685 Settlement Agreement"). On
11 December 6, 2016, CWA filed the testimony and exhibits constituting its case-in-chief
12 in Cause No. 44685-S1.

13 Since the establishment of Cause No. 44685-S1, the Intervenor Satellite
14 Customers have engaged in negotiations with CWA and the OUCC in an attempt to
15 resolve the issues in this subdocket through a definitive settlement agreement. On
16 January 30, 2017, CWA, the Intervenor Satellite Customers and the OUCC (the
17 "Settling Parties") notified the Presiding Officer that they had reached an agreement in
18 principle with respect to all of the issues in Cause No. 44685-S1, subject to preparation,
19 execution and filing of a written definitive settlement agreement ("Subdocket
20 Settlement Agreement").

21 **Q. HAVE YOU PREVIOUSLY TESTIFIED IN OTHER CWA PROCEEDINGS?**

22 A. Yes. I previously submitted testimony in support of the Cause No. 44685 Settlement.¹
23 I also submitted testimony in CWA's rate proceeding in Cause No. 44305. My
24 testimony in both of these proceedings addressed cost allocation and rate design issues.

¹ The Settling Parties in Cause No. 44685 were CWA, the OUCC, and the CWA Authority Industrial Group.

1 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

2 A. The purpose of this testimony is to provide the Commission with the background for,
3 and explain certain terms of, the Subdocket Settlement Agreement reached by CWA,
4 the OUCC, and the Intervenor Satellite Customers. My testimony concludes by
5 recommending that the Commission approve the Subdocket Settlement Agreement.

6 **II. SUBDOCKET SETTLEMENT AGREEMENT**

7 **Q. WHAT WAS THE IMPETUS BEHIND THE SETTLING PARTIES'**
8 **AGREEMENT WITH RESPECT TO RESOLUTION OF THE SATELLITE**
9 **SUBSIDY AND COST ALLOCATION ISSUES?**

10 A. The Settling Parties' agreement relating to resolution of the Satellite subsidy and cost
11 allocation issues in the Subdocket Settlement Agreement was structured to reach a
12 mutually acceptable resolution of the issues, and avoid the risk, expense, and
13 administrative burden of further litigation. The Subdocket Settlement Agreement is
14 the result of arms-length bargaining between and among the Settling Parties. While
15 each Party believed strongly in its respective position, they were able to put aside those
16 differences and agree upon a resolution of the Satellite subsidy and cost allocation
17 issues that avoids litigation, moves Satellite customers' rates to full cost-of-service by
18 January 2029, and falls within the range of potential outcomes had the case been
19 litigated.

20 **Q. THE OUCC AND INTERVENOR SATELLITE CUSTOMERS DID NOT FILE**
21 **THEIR RESPECTIVE CASES-IN-CHIEF IN THIS PROCEEDING. WHAT IS**
22 **THE BASIS FOR YOUR CLAIM THAT THE RESOLUTION OF THE**
23 **SATELLITE SUBSIDY AND COST ALLOCATION ISSUES UNDER THE**

1 **AGREEMENT FALLS WITHIN THE RANGE OF POTENTIAL OUTCOMES**
2 **IF THE CASE HAD BEEN LITIGATED?**

3 A. The Cause No. 44685 Settlement reached with the Settling Parties that was initially
4 filed with the Commission included a CWA cost of service study that identified the
5 Satellite customer cost of service as well as the Satellite customer subsidy. The final
6 order in Cause No. 44685 reduced the revenue requirement provided for in the Cause
7 No. 44685 Settlement by \$100,000. In addition, in October 2016, CWA performed a
8 true-up of actual and *pro forma* debt service that was required by the Cause No. 44685
9 Settlement. This further reduced CWA's Cause No. 44685 Settlement revenue
10 requirement by \$2.7 million. As explained by CWA in its case-in-chief in this
11 proceeding, reflecting these two revenue requirement adjustments in the CWA cost of
12 service study initially filed with the Commission with the Cause No. 44685 Settlement
13 indicates a Satellite customer cost of service of \$18,861,900.²

14 As explained in Section I, Paragraph 8 of the Satellite Settlement Agreement, it
15 has been the position of the Intervenor Satellite Customers that they should not be
16 included as a separate class for rate purposes, they should continue receiving service
17 under their current contracts and rates, and that this Commission does not have
18 jurisdiction over the current contracts and rates. They have also disagreed with CWA's
19 calculation of the Satellite customer subsidy.

20 As indicated in Section II, Paragraph 6 of the Satellite Settlement Agreement,
21 as a result of negotiations, a number of revisions were made to the cost allocations
22 reflected in the cost of service initially filed by CWA in its case-in-chief in this
23 proceeding. These revisions are discussed in further detail in Section II, Paragraph 6

² Direct Testimony of Michael C. Borchers on behalf of CWA, page 18, lines 9-12, filed December 6, 2016 in Cause No. 44685-S1.

1 of the Satellite Settlement Agreement. Therefore, the parties to this proceeding were
2 well aware of the various conflicting and divergent litigation positions.

3 **Q. WHAT ARE SOME OF THE SIGNIFICANT TERMS OF THE SATELLITE**
4 **SETTLEMENT AGREEMENT?**

5 A. Significant terms of the Satellite Settlement Agreement are as follows:

- 6 • An agreed-upon current Satellite customer cost of service of \$15,323,000 and a
7 current subsidy of \$9,909,400.
- 8 • The Intervenor Satellite Customers will operate under their current contracts
9 until December 31, 2018, and these contracts will expire effective January 1,
10 2019.
- 11 • Except to the extent modified by the terms of any Special Contracts, upon
12 termination of the current contracts, the Intervenor Satellite Customers will be
13 subject to service under Sewer Rate No. 6.
- 14 • Pursuant to the terms of the Special Contracts for each Intervenor Satellite
15 Customer, the Intervenor Satellite Customers' treatment rate would be phased
16 in to a current cost of service treatment rate of \$2.4852 per 1,000 gallons by
17 January 1, 2025, in seven annual steps.
- 18 • Also pursuant to the terms of Special Contracts for each Intervenor Satellite
19 Customer, after January 1, 2025, the \$2.4852 per 1,000 gallon treatment rate
20 will be increased in four proportional annual steps, to the cost of service
21 treatment rate then currently reflected under Sewer Rate No. 6. The fourth
22 proportional annual step will occur on January 1, 2029.
- 23 • The Settling Parties acknowledge that the amount of the operating revenues
24 resulting from the reduction to the Satellite Customer Subsidy should be
25 allocated to the Non-Industrial, Self-Reporter, and Surcharge (BOD, TSS &
26 NH3-N) rate classes in order to reduce the agreed upon revenue allocations
27 contained in the Commission's Final Order in Cause No. 44685.
- 28 • As indicated in Section II, paragraph 6, the Settling Parties have agreed upon
29 certain cost of service allocation methodologies for future rate increases
30 impacting Sewer Rate No. 6.

1 **Q. HOW WILL THE SATELLITE CUSTOMERS THAT DID NOT INTERVENE**
2 **IN THIS PROCEEDING BE AFFECTED BY THE SATELLITE**
3 **SETTLEMENT AGREEMENT?**

4 A. Upon approval of the Satellite Settlement Agreement, which includes the Special
5 Contracts with the Intervenor Satellite Customers, and Sewer Rate No. 6, by the
6 Commission, the four Satellite Customers that did not intervene would be assessed the
7 rates applicable under Sewer Rate No. 6. It is my understanding that two of these
8 customers are currently paying an effective volume treatment charge that is greater than
9 the Satellite Settlement Agreement treatment charge of \$2.4852 per 1,000 gallons.

10 **III. CONCLUSION**

11 **Q. IN YOUR OPINION, DO THE TERMS OF THE SATELLITE SETTLEMENT**
12 **AGREEMENT REPRESENT A REASONABLE RESOLUTION OF THE**
13 **ISSUES CONCERNING THE SATELLITE CUSTOMER SUBSIDY AND COST**
14 **ALLOCATIONS?**

15 A. In my opinion, yes.

16 **Q. IN CONCLUSION, WHAT DO YOU RECOMMEND TO THE COMMISSION?**

17 A. I find the Satellite Settlement Agreement reasonable and I recommend that the
18 Commission approve the Agreement.

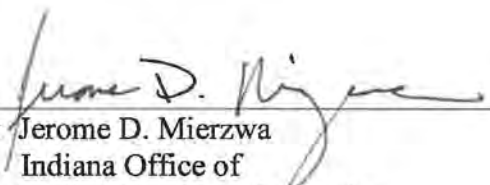
19 **Q. DOES THIS CONCLUDE YOUR TESTIMONY IN THIS PROCEEDING?**

20 A. Yes, it does.


VERIFICATION

STATE OF INDIANA)
)
COUNTY OF MARION) ss:

The undersigned, Jerome D. Mierzwa, under penalties of perjury and being first duly sworn on his oath, says that he is a Consultant for the Indiana Office of Utility Consumer Counselor; that he caused to be prepared and read the foregoing; that the representations set forth therein are true and correct to the best of his knowledge, information and belief.


By: Jerome D. Mierzwa
Indiana Office of
Utility Consumer Counselor

Subscribed and sworn to before me, a Notary Public, this 29 day of March 2017.


Signature
Deborah M Adams
Printed Name

My Commission Expires: 2/2019

My County of Residence: Howard

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing *OUCC'S Settlement Testimony of Jerome D. Mierzwa: Public's Exhibit No. 1* has been served upon the following counsel of record in the captioned proceeding by electronic service on March 30, 2017.

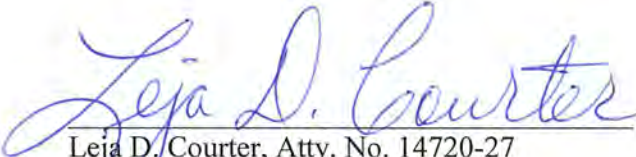
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