

ORIGINAL

*[Handwritten signatures and initials]*

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

APPLICATION OF WASTEWATER ONE, )  
LLC, FOR ISSUANCE OF AN EXPANDED )  
CERTIFICATE OF TERRITORIAL )  
AUTHORITY TO RENDER SEWAGE )  
DISPOSAL SERVICE IN A RURAL AREA )  
OF FLOYD COUNTY, INDIANA, FOR )  
CONSENT TO USE FLOYD COUNTY )  
PROPERTY, AND FOR APPROVAL OF A )  
NEW SCHEDULE OF RATES AND )  
CHARGES FOR SEWAGE DISPOSAL )  
SERVICE. )

CAUSE NO. 43779

APPROVED: JUN 16 2010

**BY THE COMMISSION:**

**Larry S. Landis, Commissioner**  
**David E. Veleta, Administrative Law Judge**

On September 4, 2009, Wastewater One, LLC (“Wastewater One”) filed a Verified Application with the Indiana Utility Regulatory Commission (“Commission”) requesting authority to increase its rates and charges for sewer service and expand its Certificate of Territorial Authority (“CTA”). On November 13, 2009, Wastewater One filed their prepared testimony and exhibits constituting their case-in-chief. On February 1, 2010, the Indiana Office of Utility Consumer Counselor (“OUCC”) filed the testimony and exhibits of Harold H. Riceman and Harold L. Rees. On February 23, 2010, Wastewater One and the OUCC presented a Joint Stipulation and Settlement Agreement (“Settlement Agreement”).

Pursuant to notice as required by law, a public evidentiary hearing was conducted in this matter on March 2, 2010, at 9:30 a.m. in Room 224 of the National City Center, 101 West Washington Street, Indianapolis, Indiana. Wastewater One and the OUCC appeared and participated in the evidentiary hearing. No members of the general public appeared at or attended this hearing.

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

1. **Notice and Jurisdiction.** Due, legal, and timely notice of the public hearing conducted by the Commission in this Cause was given as required by law. Wastewater One is a “public utility” as defined within the Public Service Commission Act, as amended, and the Commission has jurisdiction over the parties and the subject matter of this Cause to the extent provided by the laws of the State of Indiana.

2. **Petitioner’s Characteristics.** Wastewater One is a for-profit limited liability company which owns and operates sewer facilities in Floyd County, Indiana. At present,

Wastewater One serves one hundred thirteen (113) customers in Highlander Village and Cedar Point Subdivisions.

3. **Relief Requested.** Wastewater One seeks an order authorizing it to increase its rates and charges and to expand its CTA. On February 23, 2010, the parties filed a Settlement Agreement which was admitted into evidence on March 2, 2010, and settles all issues between Wastewater One and the OUCC in this Cause. A copy of the Settlement Agreement is attached hereto as Exhibit A. The parties have requested that the Commission accept and use the Settlement Agreement as a basis for entering a final order.

4. **Requirements for a CTA.** Wastewater One is seeking an expanded CTA pursuant to Indiana Code § 8-1-2-89 and 170 IAC 8.5-3-1, et seq. Pursuant to Indiana Code § 8-1-2-89(e), the Commission must review the evidence and make the following findings:

- A. Wastewater One has the lawful power and authority to apply for the CTA and to provide sewage disposal service in the proposed area;
- B. Wastewater One has the financial ability to install, commence, and maintain the facilities necessary to provide sewage disposal service; and
- C. The public convenience and necessity require the rendering of sewage disposal service in the proposed rural area by Wastewater One.

The Commission's discussion and findings with respect to the CTA requirements are set forth below.

A. **Lawful Power and Authority.** Wastewater One is an investor-owned corporation created for the purpose of providing sewer utility service in Floyd County, Indiana. This Commission has previously recognized that Wastewater One has the lawful power and authority to apply for and thereafter operate sewage disposal facilities. The prefiled testimony and exhibits of Wastewater One and the OUCC also support a finding that Wastewater One has the requisite authority to request and thereafter receive the expanded CTA. Consistent with the Settlement Agreement, therefore, the Commission finds that Wastewater One possesses the requisite lawful power and authority to provide sewer service to the expanded CTA area, which includes the remaining portions of Cedar Point Subdivision in Floyd County, Indiana.

B. **Financial Ability.** Wastewater One's witness, Bonnie J. Mann, a certified public accountant, testified and presented accounting studies demonstrating that Wastewater One's proposed plan for providing sewer service is financially viable. OUCC witness, Harold L. Rees, also agreed that Wastewater One had the financial ability to provide the desired service. Based upon the evidence contained in the record and the parties' Settlement Agreement, we find that Wastewater One has the financial ability to install, commence, and maintain the proposed sewer utility service.

C. **Public Convenience and Necessity.** In its prefiled testimony, witness

Tolliver initially requested that Wastewater One be granted additional authority to serve all of Sections 9, 10, 11, 14, 15, 16, and 23 in Floyd County, Indiana. In the OUCG witness's testimony and the Settlement Agreement, the parties agreed that Wastewater One should be authorized to provide service to the remaining portions of Cedar Point Subdivision. Based on the testimony of record, including the Settlement Agreement of the parties, the Commission finds that the public convenience and necessity will be served by the rendering of the proposed service in the remainder of the Cedar Point Subdivision.

**5. Settlement Agreement.** In the Settlement Agreement, Wastewater One and the OUCG agreed that Wastewater One should be authorized to: (i) increase its revenue by 88.48% or \$56,881 per year; (ii) earn a net operating income of \$14,838; (iii) provide a bill credit to each existing customer as of January 1, 2010, in the amount of \$20 per month for a period of eighteen (18) months; and (iv) receive an expanded CTA to include all of Cedar Point Subdivision. The remaining areas requested by Wastewater One shall remain uncertificated.

**6. Evidence in Support of Proposed Settlement Agreement.** Based on a test year ending June 30, 2009, Wastewater One's accounting witness, Bonnie J. Mann, filed testimony and exhibits requesting a 91.758% or \$59,030 increase in annual revenues which result in total *pro forma* revenues of \$123,362. Ms. Mann explained that *pro forma* revenues of \$123,362 provide Wastewater One the ability to earn \$16,113 per year. In response, the OUCG filed the testimony and exhibits of Harold H. Riceman. Mr. Riceman proposed a number of adjustments that would reduce Wastewater One's proposed increase to 88.418% or an increase of \$56,881 per year. Mr. Riceman testified that the appropriate *pro forma* annual revenue for Wastewater One should be \$121,213 and its net operating income at \$14,838. Mr. Riceman further testified that Wastewater One should be required to provide a \$20 per month bill credit to each Wastewater One customer for a period of twenty-eight (28) months on grounds Wastewater One had wrongfully imposed a \$20 surcharge since September, 2007.

**7. Commission Discussion and Findings.** Wastewater One's original petition in this matter requested an increase in its rates as well as approval for expansion of its CTA. The OUCG's case-in-chief identified numerous issues of concern with Wastewater One's requests. As a consequence of these and other concerns, Wastewater One and the OUCG agreed that Wastewater One should be authorized to: (i) increase its revenue by 88.42% or \$56,881 per year; (ii) earn a net operating income of \$14,838; (iii) provide a bill credit to each existing customer as of January 1, 2010, in the amount of \$20 per month for a period of eighteen (18) months; and (iv) receive an expanded CTA to include all of Cedar Point Subdivision.

We begin with the general statement that settlements presented to the Commission are not ordinary contracts between private parties. *United States Gypsum, Inc. v. Indiana Gas Co.*, 735 N.E.2d 790, 803 (Ind. 2000). When the Commission approves a settlement, that settlement "loses its status as a strictly private contract and takes on a public interest gloss." *Id.*, quoting *Citizens Action Coalition v. PSI Energy*, 664 N.E.2d 401, 406 (Ind. Ct. App. 1996). Thus, the Commission "may not accept a settlement merely because the private parties are satisfied; rather [the Commission] must consider whether the public interest will be served by accepting the settlement." *Citizens Action Coalition*, 664 N.E.2d at 406. Examinations of the public interest may include the impact of a given decision on customers of various classes, the interests of the utility and its stakeholders, and the impact on the State. The interest of the State may be "more

comprehensive and take a longer range view than any of the parties' interests." *Nextel West Corp. v. Ind. Util. Regulatory Comm'n*, 831 N.E.2d 134, 156-57 (Ind. App. 2005.)

The Commission is not required to accept a settlement simply because the parties have agreed to it, and agreements filed by some or all of the parties must still be supported by probative evidence. *Id.* Furthermore, any Commission decision, ruling, or order – including the approval of a settlement – must be supported by specific findings of fact and sufficient evidence. *United States Gypsum*, 735 N.E.2d at 795, citing *Citizens Action Coalition v. Public Service Co.*, 582 N.E.2d 330, 331 (Ind. 1991). The Commission's own procedural rules require that settlements be supported by probative evidence. 170 I.A.C. 1-1.1-17(d). Therefore, before the Commission can approve any Settlement Agreement, we must determine whether the evidence in this Cause sufficiently supports the conclusions that the settlement is reasonable, just, and consistent with the purpose of Indiana Code § 8-1-2, and that such agreement serves the public interest.

We do find that approval of the settlement is in the public interest, but with the following modifications.

A. **Full Refund.** The Settlement Agreement appears to strike a compromise when, instead of requiring Wastewater One to refund customers based on twenty-eight (28) months, it allows Wastewater One to refund customers based on eighteen (18) months, a loss of \$200 per customer. The Settlement Agreement is contrary to the clear directive in the Commission's Order in Cause No. 41584. There is no question that Wastewater One did not comply with the Order in Cause No. 41584 when it did not eliminate the \$20 surcharge in August 2007. Moreover, Wastewater One was required to submit quarterly reports to the OUCC and the Commission while the \$20 surcharge was in effect, but never did. Finally, the OUCC sent Wastewater One a letter a year ago urging Wastewater One to come into compliance with the Commission's Order and the underlying settlement agreement, but the Wastewater One never addressed the issue. Wastewater One claims that in Cause No. 43482 it attempted to address this issue, but neither the Wastewater One's petition nor its testimony acknowledged that this issue existed. Further, that Petition was not filed until approximately eight (8) months after the surcharge was to expire. Additionally, there is no evidence in the record of this Cause of how the eighteen (18) month time period was selected. Therefore, Wastewater One should issue refunds to each of its customers to repay them for this unauthorized charge it has collected since September, 2007, in the form and manner contemplated by the bill credit proposed in the Settlement Agreement.

B. **Refunding to Customers.** The parties proposed to return the credits over an eighteen (18) month period to those customers connected as of January 1, 2010. However, this agreement may or may not refund the customers that paid the unauthorized charge. Therefore, within sixty (60) days of the Commission's final order, Wastewater One shall identify the name, account number and total refund for each customer charged the unauthorized \$20 surcharge from September 2007 to the present. For customers that are due a credit and are no longer a customer, notice shall be sent to the customer's last known address and a legal notice shall be published at least twice in a paper of general circulation that identifies each customer and the amount of refund due with the utility's

contact information. The legal notice shall be preapproved by the Commission. Customers no longer connected to Wastewater One's system shall have sixty (60) days from the date of the second legal notice or direct mailing notice, whichever is later to claim their refund in the form of a lump sum check. For any refunds not claimed within sixty (60) days, Wastewater One shall be required to follow Indiana escheat property law.<sup>1</sup> The expectations include transferring all unclaimed refunds to the state's unclaimed property fund as prescribed by state law. Finally, if a customer leaves the system prior to the twenty-eight (28) month payback period and a refund balance still exists, a refund check should be issued for the unpaid balance.

Based on the evidence presented, the Commission finds that Wastewater One should be authorized to increase its rates and charges to produce additional operating revenue of \$56,881, or an 88.42% increase in revenues, resulting in total annual revenues of \$121,213. This revenue is reasonably estimated to afford Wastewater One the opportunity to earn a net operating income of \$14,838, as follows:

<u>Description</u>	<u>Pro-Forma Proposed Rates</u>
Operating Revenues:	
Sewer Revenues	\$ 120,060
Other Operating Income	1,153
Total Operating Revenues	<u>121,213</u>
Operation and Maintenance expenses	88,834
Depreciation Expense	4,384
Taxes Other than Income	3,795
Income Taxes	9,361
Total Operating Expenses	<u>106,374</u>
Net Operating Income	<u>\$ 14,838</u>

The calculation of Wastewater One's authorized percent increase is depicted below:

Rate Base	\$ 174,771
Times: Weighted Cost of Capital	8.49%
Required Net Operating Income ("NOI")	14,838
Less Pro-forma NOI at present rates	<u>(18,743)</u>
Increase in NOI required	33,581
Times: Gross Rev. Conversion Factor	<u>169.3801%</u>
Increase in operating revenue required	56,881
Sewer revenues at present rates	<u>64,332</u>
Net Revenue Requirements	<u>\$ 121,213</u>
Recommended Percentage Increase	<u>88.42%</u>

<sup>1</sup> Indiana Code § 32-34-1

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

1. The Joint Stipulation and Settlement Agreement attached as Exhibit A shall be and is hereby approved with the above modifications noted in section 8(A) and 8(B) above. All terms and conditions of this Stipulation and Settlement Agreement shall be and hereby are incorporated herein as part of this Order. The parties are ordered to comply with each and every term of the Stipulation and Settlement Agreement as approved.

2. Petitioner, Wastewater One, LLC, shall be and is hereby granted a CTA to render sewage disposal service in Cedar Point Subdivision in Floyd County, Indiana, which area is depicted, described, and defined in Exhibits 19 and 20 of Petitioner's Supplemental Testimony and Exhibits filed on March 11, 2010. This Order shall be the sole evidence of the CTA.

3. Petitioner shall file with the Commission's Water/Sewer Division a schedule of rates and charges in accordance with the Commission's rules. Said tariff, when approved by the Water/Sewer Division shall cancel all previously approved rates and charges and Petitioner's new charges shall be in full force and effect.

4. In accordance with the Joint Stipulation and Settlement Agreement that requires the parties to agree to any modifications by the Commission to the settlement, the parties shall notify the Commission in writing within ten (10) days of the date of this Order whether the parties accept the Commission's modifications to the Joint Stipulation and Settlement Agreement. In accordance with the Joint Stipulation and Settlement Agreement, Petitioner shall file rebuttal testimony within fourteen (14) days after the Commission's Order, if the Commission's modifications to the Joint Stipulation and Settlement Agreement are not accepted by the parties.

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

**HARDY, ATTERHOLT, MAYS AND ZIEGNER CONCUR; LANDIS ABSENT:**

**APPROVED: JUN 16 2010**

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



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

FILED  
February 23, 2010  
INDIANA UTILITY  
REGULATORY COMMISSION

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

APPLICATION OF WASTEWATER )  
ONE, LLC FOR ISSUANCE OF AN )  
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SERVICE. )

**JOINT STIPULATION AND SETTLEMENT AGREEMENT**

This Joint Stipulation and Settlement Agreement ("Settlement Agreement") is entered into this 23rd day of February, 2010, by and between Wastewater One, LLC ("Wastewater One") and the Office of the Utility Consumer Counselor ("OUCC"), who stipulate and agree for purposes of settling all matters in this Cause that the terms and conditions set forth below represent a fair and reasonable resolution of all issues in this Cause, subject to their incorporation in a final Order of the Indiana Utility Regulatory Commission ("Commission").

**Terms and Conditions of Settlement Agreement**

1. **Requested Relief.** On September 4, 2009, Wastewater One filed its Verified Application with the Commission requesting authority to: (i) increase its rates and charges for sewer service; and (ii) expand its present Certificate of Territorial Authority ("CTA").

2. **Prefiled Evidence.** On November 13, 2009, Wastewater One prefiled the Direct Testimony and Exhibits of Stephen R. Tolliver, Sr. and Bonnie J. Mann. On January 22, 2010, Wastewater One filed the Supplemental Prefiled Direct Testimony and Exhibits of Bonnie J. Mann. In its prefiled materials, Wastewater One proposed to increase its rates by 91.758% and expand its CTA to include all of Sections 9, 10, 11, 14, 15, 16, and 23 in Floyd County, Indiana.

The OUCC prefiled the Direct Testimony and Exhibits of Harold H. Riceman and Harold L. Rees on February 1, 2010. In its prefiled evidence, the OUCC proposed to reduce the amount of Wastewater One's rate increase based on a number of adjustments, including, but not limited to, adjustments to Wastewater One's proposed cost of equity, rate base, rate case expense, accumulated depreciation, and working capital. The OUCC also proposed that Wastewater One: (i) provide all current customers with a credit of \$20 per month for a period of twenty-eight (28) months; and (ii) receive a more limited expansion to its CTA that included only the remaining uncertificated areas in Cedar Point Subdivision.

3. **Settlement.** Through analysis, discussion, and negotiation, as aided by their respective technical staff and experts, Wastewater One and the OUCC have now agreed on terms and conditions set forth herein that resolve all issues between them in this Cause.

4. **Unique Circumstances of this Case.** In reaching a settlement, the parties recognize the unique historical circumstances surrounding this utility. Prior to Wastewater One's ownership, the utility had a long history of mismanagement, poor maintenance and service, and regulatory noncompliance. The parties agree that since Wastewater One assumed ownership of the utility in 2006, Wastewater One has made significant investment in, and improvements to, the utility. Specifically, Wastewater One has rehabilitated manholes; disconnected illegal sump pump and downspout connections; replaced an old blower building and blower; patched a number of holes in the utility's treatment tanks; installed a new flow meter and new sulfur dioxide feeder with associated piping; and made repairs to lift station controls, electrical box, and pumps. By all accounts, Wastewater One has transformed what had been a very poorly operated and maintained utility into a utility that now appears to be compliant with all of the Indiana Department of Environmental Management's regulations and "is in good operating condition and has good performance for a utility of its size."

5. **Rates and Charges for Service.** The current rate for this utility was approved by the Commission in 1981. On May 22, 2002, the Commission recognized in Cause No.

41584 that the "\$25 flat monthly rate [was] insufficient to cover the expenses incurred to operate the utility and perform necessary repairs and maintenance." (See Commission Order in Cause No. 41584, p. 4, ¶4). Consequently, the Commission authorized an interim \$20 per customer monthly surcharge that increased the flat monthly charge for sewer service from \$25 to \$45 per month. Later in that same Cause, and in response to Wastewater One's request to increase the rate above \$45 a month, the OUCC and Wastewater One entered into an agreement ("Surcharge Agreement") whereby the \$20 surcharge would be continued for the earlier of eighteen (18) months or the end of Wastewater One's next rate case. The parties agree that when entering into the Surcharge Agreement the OUCC acknowledged that Wastewater One needed an aggregate rate of \$45 to pay the expenses of the utility. The parties now agree that Wastewater One should be approved by the Commission to impose a new monthly rate of \$84.79 per equivalent dwelling.

To settle the issue over the potential refund of the \$20 monthly surcharge collected after the 18-month period (since September, 2007), the parties have agreed that Wastewater One should issue a \$20 per month credit for all customers who were receiving service as of January 1, 2010. The parties further agree that the credit will be added to the first bills sent after the final order in this Cause and continue for a total of eighteen (18) months. In exchange for this agreement by the OUCC, Wastewater One agreed not to raise and waives any defenses it might have in this proceeding only with respect to an obligation to issue a refund or credit. Moreover, the parties acknowledge that Wastewater One attempted to affect a rate increase in Cause No. 43482, which was filed on April 14, 2008, but that the request was withdrawn in order to permit Wastewater One to prepare and present a more complete case. In light of these factors, the parties agree that continuing the surcharge over eighteen (18) months rather than the twenty-eight (28) months as originally suggested by the OUCC, is a reasonable compromise.

6. **Expanded Certificate of Territorial Authority.** The parties agree that Wastewater One should receive an expanded CTA to include all of Cedar Point Subdivision, which is located within Section 11. Thus, the expanded CTA should include the area currently served by Wastewater One, as well as the Rosenberg property. The expanded CTA area is depicted as Cedar Point 1 and 2 on Exhibit A attached hereto. The remaining areas requested by Wastewater One in its September 4, 2009 Verified Application (and shown on Exhibit A) shall remain uncertificated at this time.

7. **Admissibility and Sufficiency of Evidence.** The parties hereby stipulate to the admission without objection of the Prefiled Direct Testimony and Exhibits of Stephen R. Tolliver and Bonnie J. Mann, as well as the Supplemental Testimony of Bonnie J. Mann. The parties also stipulate to the admission without objection to the Prefiled Direct Testimony and Exhibits of OUCC Witnesses, Harold H. Riceman and Harold L. Rees. The parties agree that such evidence constitutes substantial evidence sufficient to support this Settlement Agreement and provides adequate evidentiary basis upon which the Commission can make all findings of fact and conclusions of law necessary for the approval of this Settlement Agreement as filed.

8. **Non-Precedential Effect of Settlement.** The parties agree that the facts in this Cause are unique and all issues presented fact specific. Therefore, the Settlement Agreement shall not constitute nor be cited as precedent by any person or deemed an admission by any party in any other proceeding except as necessary to enforce its terms before the Commission or any court of competent jurisdiction. This Settlement Agreement is solely the result of compromise in the settlement process, except as provided herein, is without prejudice to and shall not constitute a waiver of any position that either party may take with respect to any issue in any future regulatory or non-regulatory proceeding.

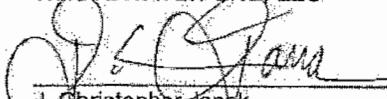
9. **Authority to Execute.** The undersigned have represented and agreed that they are fully authorized to execute the Settlement Agreement on behalf of their designated clients who will hereafter be bound thereby.

10. Joint Proposed Order. The parties have agreed to a proposed final order ("Final Order"), the form of which is attached hereto as Exhibit B.

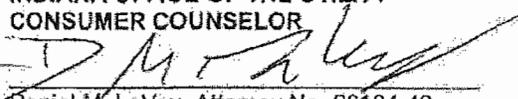
11. Approval of Settlement Agreement in its Entirety and Issuance of Final Order. As a condition of this settlement, the parties specifically agree that if the Commission does not approve this Joint Stipulation and Settlement Agreement in its entirety and incorporate it into the Final Order as provided above, the entire Settlement Agreement shall be null and void and deemed withdrawn, unless otherwise agreed to in writing by the parties. The parties further agree that in the event the Commission does not issue the Final Order in a form that is substantively identical (in the sole discretion of either party) to Exhibit B, either party may invoke this provision by notifying the other party, as well as the presiding officer. In such case, Wastewater One shall be permitted to file rebuttal testimony within fourteen (14) days after the Commission's Order, and the parties will jointly request that the Commission hear the case as if it was not settled.

12. No Other Agreements. There are no agreements in existence between the parties relating to the matters covered by this Settlement Agreement that in any way affect this Settlement Agreement.

**WASTEWATER ONE, LLC**

  
J. Christopher Janak  
Attorney No. 18493-49  
Bose McKinney & Evans LLP  
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Fax: (317) 684-5173

**INDIANA OFFICE OF THE UTILITY  
CONSUMER COUNSELOR**

  
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CERTIFICATE OF SERVICE

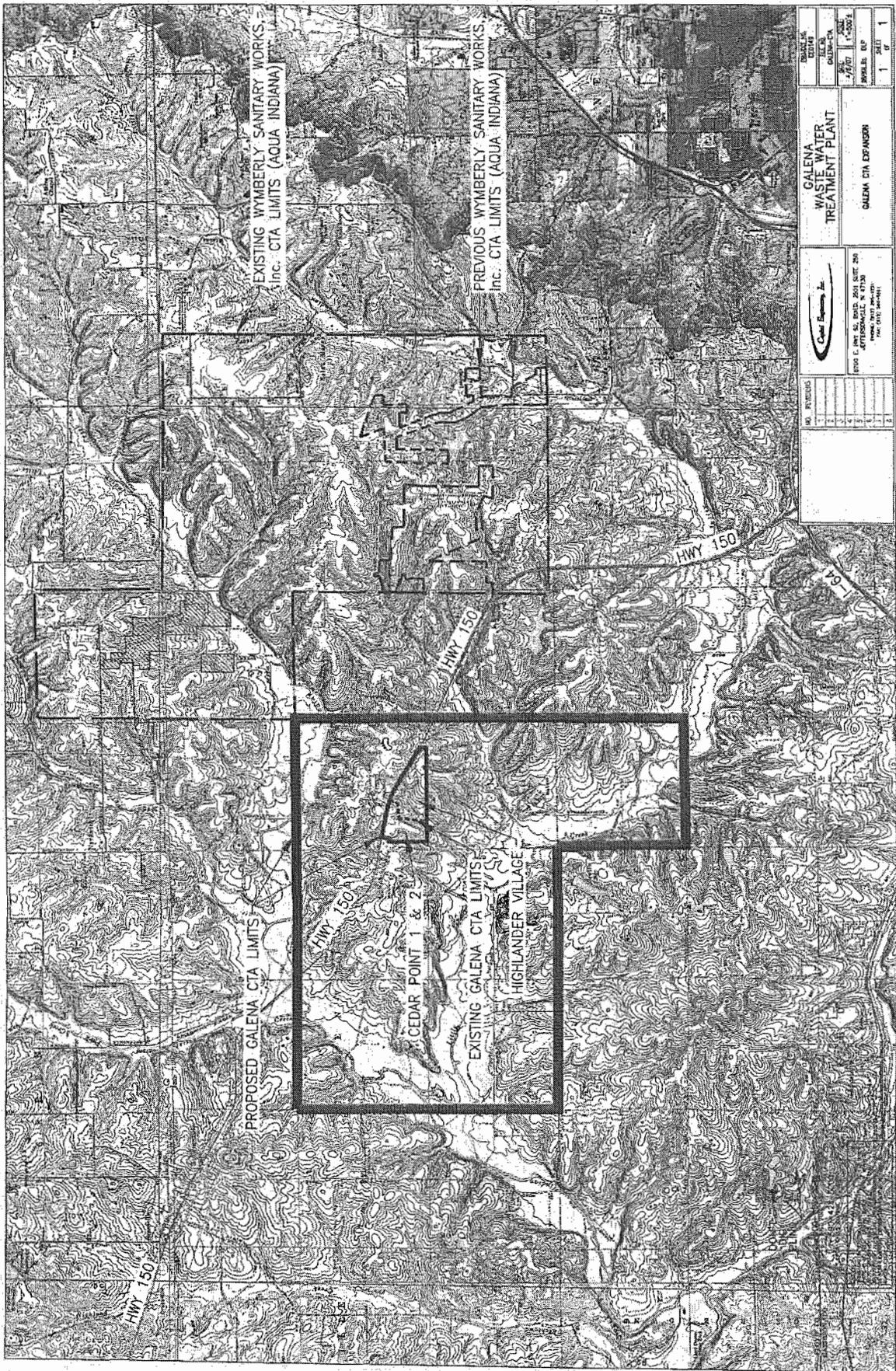
I certify that a copy of the foregoing "Joint Stipulation and Settlement Agreement" was served upon the following by electronic mail this 23<sup>rd</sup> day of February, 2010:

Dan LeVay  
Indiana Office of Utility Consumer Counselor  
National City Center  
115 W. Washington St.  
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Indianapolis, Indiana 46204  
[dlevay@oucc.in.gov](mailto:dlevay@oucc.in.gov)

  
\_\_\_\_\_  
J. Christopher Janak

Bose McKinney & Evans LLP  
111 Monument Circle, Suite 2700  
Indianapolis, IN 46204  
(317) 684-5000

1614037\_1



EXISTING WYMBERLY SANITARY WORKS  
Inc. CTA LIMITS (AQUA INDIANA)

PREVIOUS WYMBERLY SANITARY WORKS  
Inc. CTA LIMITS (AQUA INDIANA)

PROPOSED GAENA CTA LIMITS

CEDAR POINT 1 & 2

EXISTING GAENA CTA LIMITS

HIGHLANDER VILLAGE

HWY 150

HWY 150

HWY 150

HWY 150

		<b>GAENA WASTE WATER TREATMENT PLANT</b> GAENA CTA EXPANSION	
SHEET NO. 1 OF 1	DATE: 7/1/07	SCALE: 1"=500' PROJECT: WWT DRAWN BY:	CHECKED BY:
PROJECT NO.		SHEET NO.	
DATE:		SCALE:	
DRAWN BY:		CHECKED BY:	
PROJECT NO.		SHEET NO.	
DATE:		SCALE:	
DRAWN BY:		CHECKED BY:	

EXHIBIT  
A

STATE OF INDIANA

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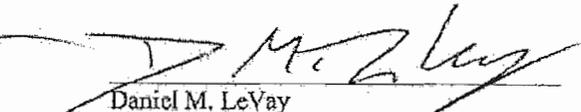
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JOINT PROPOSED ORDER



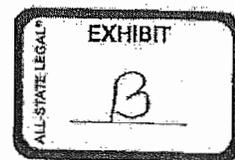
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Counsel for the Office of the  
Utility Consumer Counselor



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**BY THE COMMISSION:**

Jeffrey Golc, Commissioner  
David Veleta, Administrative Law Judge

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On November 13, 2009, Wastewater One prefiled the testimony and exhibits of Stephen R. Tolliver, Sr. and Bonnie J. Mann. Wastewater One later filed the Supplemental Testimony and Exhibits of Bonnie J. Mann on January 22, 2010. On February 1, 2010, the OUCC prefiled the testimony and exhibits of Harold H. Riceman and Harold L. Rees. On February 23, 2010, Wastewater One and the OUCC presented a Joint Stipulation and Settlement Agreement ("Settlement Agreement").

Pursuant to notice as required by law, a public evidentiary hearing was conducted in this matter on March 2, 2010, at 9:30 a.m. in Room 224 of the National City Center, 101 West Washington Street, Indianapolis, Indiana. No members of the general public appeared at or attended this hearing. The parties offered their evidence into the record, as described above, which was accepted without objection.

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

1. **Statutory Notice and Commission Jurisdiction.** Due, legal, and timely notice of the public hearing conducted by the Commission in this Cause was given as required by law. Wastewater One is a "public utility" as defined within the Public Service Commission Act, as amended, and the Commission has jurisdiction over the parties and the subject matter of this Cause to the extent provided by the laws of the State of Indiana.

2. **Petitioner's Characteristics.** Wastewater One is a for-profit limited liability company which owns and operates sewer facilities in Floyd County, Indiana. At present, Wastewater One serves one hundred eighteen (118) customers in Highlander Village and Cedar Point Subdivisions.

3. **Relief Requested.** Wastewater One seeks an order authorizing it to increase its rates and charges and to expand its CTA. On February 23, 2010, the parties filed a Settlement Agreement which was admitted into evidence on March 2, 2010, and settles all issues between Wastewater One and the OUCC in this Cause. A copy of the Settlement Agreement is attached hereto as Exhibit A. The parties have requested that the Commission accept and use the Settlement Agreement as a basis for entering a final order.

4. **Schedule of Rates and Charges.** Based on a test year ending June 30, 2009, Wastewater One's accounting witness, Bonnie J. Mann, filed testimony and exhibits requesting a 91.578% or \$59,030 increase in annual revenues which result in total proforma revenues of \$123,362. With proforma revenues of \$123,362, Ms. Mann proposed that Wastewater One be authorized to earn \$16,113 per year. In response, the OUCC filed the testimony and exhibits of Harold H. Riceman. Mr. Riceman proposed a number of adjustments that would reduce Wastewater One's proposed increase to 88.418% or an increase of \$56,881 per year. Mr. Riceman testified that the appropriate proforma annual revenue for Wastewater One should be \$120,060 and its net operating income only \$14,838. Mr. Riceman further testified that Wastewater One should be required to provide a \$20 per month bill credit to each Wastewater One customer for a period of twenty-eight (28) months on grounds Wastewater One had wrongfully imposed a \$20 surcharge since September, 2007.

In the Settlement Agreement, Wastewater One and the OUCC agreed that Wastewater One should be authorized to: (i) increase its revenue by 88.48% or \$56,881 per year; (ii) earn a net operating income of \$14,838; and (iii) provide a bill credit to each existing customer as of January 1, 2010, in the amount of \$20 per month for a period of eighteen (18) months. Based upon the evidence of record, the Commission finds that the Settlement Agreement provides a fair, reasonable, and exclusive means of resolving all issues in this Cause. Accordingly, the Commission hereby approves the Settlement Agreement in its entirety, including the rates and charges set forth therein.

5. **Requirements for a CTA.** Wastewater One is seeking an expanded CTA pursuant to Indiana Code § 8-1-2-89 and 170 IAC 8.5-3-1, et seq. Pursuant to Indiana Code § 8-1-2-89(e), the Commission must review the evidence and make the following findings:

- A. Wastewater One has the lawful power and authority to apply for the CTA and to provide sewage disposal service in the proposed area;

- B. Wastewater One has the financial ability to install, commence, and maintain the facilities necessary to provide sewage disposal service; and
- C. The public convenience and necessity require the rendering of sewage disposal service in the proposed rural area by Wastewater One.

The Commission's discussion and findings with respect to the CTA requirements are set forth below.

A. **Lawful Power and Authority.** Wastewater One is an investor-owned corporation created for the purpose of providing sewer utility service in Floyd County, Indiana. This Commission has previously recognized that Wastewater One has the lawful power and authority to apply for and thereafter operate sewage disposal facilities. The prefiled testimony and exhibits of Wastewater One and the OUCC also support a finding that Wastewater One has the requisite authority to request and thereafter receive the expanded CTA. Consistent with the Settlement Agreement, therefore, the Commission finds that Wastewater One possesses the requisite lawful power and authority to provide sewer service to the expanded CTA area, which includes the remaining portions of Cedar Point Subdivision in Floyd County, Indiana.

B. **Financial Ability.** Wastewater One's witness, Bonnie J. Mann, a certified public accountant, testified and presented accounting studies demonstrating that Wastewater One's proposed plan for providing sewer service is financially viable. OUCC Witness, Harold L. Rees, also agreed that Wastewater One had the financial ability to provide the desired service. Based upon the evidence contained in the record and the parties' Settlement Agreement, we find that Wastewater One has the financial ability to install, commence, and maintain the proposed sewer utility service.

C. **Public Convenience and Necessity.** In its prefiled testimony, Witness Tolliver initially requested that Wastewater One be granted additional authority to serve all of Sections 9, 10, 11, 14, 15, 16, and 23 in Floyd County, Indiana. In the OUCC's witness's testimony and the Settlement Agreement, the parties agreed that Wastewater One should be authorized to provide service to the remaining portions of Cedar Point Subdivision. Based on the testimony of record, including the Settlement Agreement of the parties, the Commission finds that the public convenience and necessity will be served by the rendering of the proposed service in the remainder of Cedar Point Subdivision.

6. **Approval of Settlement Agreement.** In their Settlement Agreement, the parties agreed that the terms and conditions therein represent a fair, reasonable, and just resolution of all issues raised in this Cause. After reviewing the terms of the Settlement Agreement, we find that the Settlement Agreement is reasonable, serves the public interest, and is a desirable and lawful resolution of the issues presented in this Cause. Therefore, we find that the Settlement Agreement should be approved and is hereby incorporated into this Order into its entirety by reference, as if set out fully within. The parties are ordered to comply with the terms of the Settlement Agreement as approved herein.

7. **Non-Precedential Status.** The parties stipulated that the settlement of this Cause and any resulting order should not construed or cited as precedent by any person in any other proceeding whether before the Commission, any state court, or other court of competent jurisdiction, except as is necessary to enforce the terms of their agreement as approved in this Order. Consequently, we find that our approval herein should be construed in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434 (Indiana Utility Reg. Commission, March 19, 1997).

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

1. The Joint Stipulation and Settlement Agreement attached as Exhibit A shall be and is hereby approved. All terms and conditions of this Stipulation and Settlement Agreement shall be and hereby are incorporated herein as part of this Order. The parties are ordered to comply with each and every term of the Stipulation and Settlement Agreement as approved.

2. Petitioner, Wastewater One, LLC, shall be and is hereby granted a CTA to render sewage disposal service in Cedar Point Subdivision in Floyd County, Indiana, which area is depicted, described, and defined in Exhibit A. This Order shall be the sole evidence of the CTA.

3. Petitioner shall schedule with the Commission's Water/Sewer Division a schedule of rates and charges prior to placing the rates authorized herein into effect.

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

**HARDY, LANDIS, ZIEGNER, GOLC, AND ATTERHOLT CONCUR:**  
APPROVED:

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

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Brenda A. Howe,  
Secretary to the Commission

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