

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

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PETITION OF THE CITY OF FORT WAYNE, INDIANA FOR APPROVAL TO ADJUST ITS RATES AND CHARGES AND ISSUE BONDS TO PROVIDE FUNDS TO DEFEASE EXISTING INDEBTEDNESS AND FINANCING IMPROVEMENTS TO ITS WATERWORKS ) CAUSE NO. 44162 APPROVED: OCT 17 2012

ORDER OF THE COMMISSION ON LESS THAN ALL ISSUES

Presiding Officers: Carolene Mays, Commissioner David E. Ziegner, Commissioner Aaron A. Schmoll, Senior Administrative Law Judge

On February 27, 2012, the City of Fort Wayne, Indiana ("Fort Wayne" or "Petitioner") filed with the Indiana Utility Regulatory Commission ("Commission") a Petition ("Petition") requesting authority to adjust its rates and charges and issue bonds to defease existing indebtedness and finance improvement to its waterworks. On February 28, 2012, Fort Wayne prefiled the direct testimony and exhibits of Matthew A. Wirtz, P.E., and John R. Skomp, C.P.A., which constituted its case-in-chief.

On March 7, 2012, the City of New Haven, Indiana ("New Haven") filed a Petition to Intervene, and on April 5, 2012, General Motors LLC ("General Motors") filed its Petition to Intervene. Both Petitions to Intervene were granted by the Commission.

Pursuant to notice duly published as required by law, the Commission held a public field hearing on May 31, 2012, at Ivy Tech Community College – Northeast Coliseum Campus Auditorium, 3800 North Anthony Boulevard, Fort Wayne, Indiana, 46805, at 6:00 p.m., local time. At the public field hearing, the Commission received oral and written comments from the public.

On June 14, 2012, Fort Wayne filed a Notice of Settlement indicating that the parties had reached a global settlement in principle. On July 3, 2012, Fort Wayne, New Haven, General Motors, and the Office of Utility Consumer Counselor ("OUCC") filed a fully executed Joint Stipulation and Settlement Agreement ("Settlement Agreement").

Pursuant to notice duly established as required by law, proof of which was incorporated into the record by reference and placed in the official files of the Commission, an evidentiary hearing was held in this Cause on July 31, 2012, at 10:30 a.m., in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Fort Wayne, New Haven, General Motors, and the OUCC were present and participated. No member of the general rate paying public

appeared or sought to testify at the evidentiary hearing. During the hearing, the parties offered their respective testimony and exhibits which were admitted into the record. As part of its prefiled evidence, Fort Wayne included an executed copy of the Settlement Agreement.

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

1. **Notice and Jurisdiction.** Notice of the time and place of the hearings conducted by the Commission in this Cause was given as required by law. Fort Wayne is a municipally owned utility, subject to the Commission's jurisdiction as defined in Indiana Code ch. 8-1-2 and art. 8-1.5. Accordingly, the Commission has jurisdiction over Fort Wayne and the subject matter in this Cause.

2. **Petitioner's Characteristics.** Fort Wayne serves over 82,000 customers in and around its municipal limits. Fort Wayne's customer base is comprised of residential, commercial, industrial, governmental, and wholesale customers. The population of the area served by Fort Wayne exceeds 225,000 people. Fort Wayne's distribution system consists of approximately 1,160 miles of water main, ranging in size from 3 to 54 inches in diameter.

Fort Wayne's primary source of supply consists of impoundment of water from the St. Joseph River and three reservoirs providing capacity of about 500 million gallons ("mg") in the Cedarville Reservoir, 260 mg in the St. Joseph River Dam Reservoir, and nearly 1.9 billion gallons in the Hurshtown Reservoir. The raw water is treated at the Three Rivers Filtration Plant ("Filtration Plant") which has a design capacity of 72 million gallons per day ("MGD"), on site finished water storage of 20 mg, and high service pumping capacity of approximately 120 MGD. Fort Wayne has seven elevated storage tanks with a combined capacity of approximately 8.5 mg. The elevated storage tanks are located throughout the service area to ensure an adequate quantity of water and water pressure for Fort Wayne's customers. Fort Wayne also has two concrete ground storage reservoirs which have a total capacity of 8 million gallons. Fort Wayne uses four booster pumping stations in addition to the Filtration Plant's high service pumping to provide water service to its customers.

In addition to the integrated facilities described above, Fort Wayne also owns and operates a .43 MGD iron and manganese removal treatment plant for a small residential area located approximately 5 miles northeast of Fort Wayne's main system. The source of supply for this area is two water production wells and the system plant includes .037 million gallons of finished water storage and 1.5 miles of water mains. This system currently serves 10 residential customers. Upon build out of the area, Fort Wayne anticipates that this portion of its system will serve 200 customers.

3. **Existing Rates, Test Year, and Relief Requested.** Fort Wayne's existing rates and charges were established by Final Order issued by the Commission on August 23, 2006, in Cause No. 42979. Fort Wayne sought approval in this matter to adjust its rates and charges based on a test year ending October 31, 2011, adjusted for changes which are fixed, known, measurable, and occurring within twelve (12) months. Fort Wayne proposed in its direct case to increase its rates and charges by an average of 39.71% to be implemented in three phases. Fort

Wayne proposed to implement the first phase on January 1, 2013, in the amount of 22.31%, and then implement the second and third phases on January 1, 2014, and January 1, 2015, in the amounts of 8.76% and 5.02%, respectively.

In addition to requesting an adjustment to its rates, Fort Wayne sought authority to issue up to \$40,000,000 in water utility revenue bonds ("Proposed Bonds"). Fort Wayne proposed to use the proceeds from the Proposed Bonds to pay off existing indebtedness and finance improvements to Fort Wayne's water facilities.

**4. Fort Wayne's Prefiled Direct Testimony and Exhibits.** Fort Wayne's professional engineer and technical witness in this Cause, Matthew A. Wirtz, described Fort Wayne's current system, the acquisition and integration of the facilities and customers purchased from Utility Center, Inc., d/b/a Aqua Indiana, Inc. ("Aqua"), and the improvements that would be constructed with the proceeds from the Proposed Bonds. Fort Wayne's Certified Public Accountant and Financial Consultant, John R. Skomp, testified regarding the rates and charges necessary to meet the financial needs of the utility, as well as the financial aspects associated with the issuance of the Proposed Bonds.

**A. Wirtz Testimony and Exhibits.** In his prefiled testimony and exhibits, Mr. Wirtz described Fort Wayne's existing waterworks production, treatment, transmission, and distribution facilities. Mr. Wirtz also described how Fort Wayne acquired (and began integration of) the northern portion of the water system previously owned and operated by Aqua. According to Mr. Wirtz, Fort Wayne completed the acquisition in 2008, discontinued use of Aqua's water production facilities, and then interconnected approximately 8,400 mostly residential Aqua customers ("Aqua Customers") to Fort Wayne's system. Mr. Wirtz explained that in his opinion the purchase of the Aqua system has been very positive for Fort Wayne and its customers in that Fort Wayne has been able to spread its fixed cost of operating its water system over a larger customer base. Mr. Wirtz further opined that the availability and use of Aqua's elevated storage facilities enabled Fort Wayne to avoid the cost of constructing its own water storage facilities. Mr. Wirtz stated that Fort Wayne's purchase also benefited the Aqua customers in that the Aqua Customers have experienced improved service at much lower rates. Mr. Wirtz explained that Fort Wayne financed its initial acquisition of the Aqua facilities by issuing a bond anticipation note ("BAN") that would now be paid off with a portion of the proceeds from the Proposed Bonds.

Mr. Wirtz next summarized the major projects to be funded with the proceeds from the Proposed Bonds. These include the: (a) northwest feeder main Phase III; (b) water main rehabilitation and replacement; (c) installation of new water meters in the North area; and (d) filtration plant asset renewal and replacement. Mr. Wirtz testified that the capital improvements were reasonable and necessary for Fort Wayne to provide safe and efficient service to its customers. Mr. Wirtz also described the process Fort Wayne utilized to establish the estimated cost of the proposed projects and stated that the estimates were, in his professional opinion, reasonable.

**B. Skomp Testimony and Exhibits.** Mr. Skomp testified that Fort Wayne was requesting permission to adjust its rates and charges and issue approximately \$40,000,000 of

long term debt (i.e. the Proposed Bonds). Mr. Skomp explained that Fort Wayne intended to use the proceeds from the Proposed Bonds to fund construction of certain capital improvements and pay off existing indebtedness (i.e. the BAN).

In his prefiled testimony and exhibits, Mr. Skomp explained that Fort Wayne had a total revenue requirement of \$43,069,464. To fund the total revenue requirement, Witness Skomp testified that Fort Wayne required a 39.71% increase to its current rates and charges. Mr. Skomp explained that Fort Wayne proposed to implement the 39.71% increase in three phases. The Phase I increase would be 22.31% and would provide revenues to meet Fort Wayne's basic operation and maintenance expenses, current bond payments, debt service associated with the issuance of the Proposed Bonds, extensions and replacements in 2013, and taxes other than income taxes. The Phase II increase would be implemented on January 1, 2014, in the amount of 8.76% to fund the estimated combined 2014 debt service payment on the Proposed Bonds, extensions and replacements in 2014, and taxes other than income taxes. Mr. Skomp proposed that the Phase III portion of the rate increase be implemented on January 1, 2015, in the amount of 5.02% to fund the estimated 3 years annual debt service on all of Fort Wayne's indebtedness, as well as the 2 year average annual extensions and replacements and taxes other than income taxes. Mr. Skomp explained that the three phase increase would allow Fort Wayne to operate its utility, make needed capital improvements, and meet the financial needs of the utility, including the anticipated payments on the Proposed Bonds.

Mr. Skomp further explained that a portion of the Proposed Bonds would be used to retire the existing BAN that was due to mature on February 5, 2013. Mr. Skomp testified that the existing BAN could not be renewed beyond February 5, 2013, due to restrictions imposed by Ind. Code § 5-1-14-5.

**5. Settlement Agreement.** On July 3, 2012, the parties filed the Settlement Agreement which settled all issues between the parties. Pursuant to the Settlement Agreement, Fort Wayne is authorized to increase its rates and charges for water service to reflect a total net revenue requirement in the amount of \$41,632,050, resulting in a total increase of \$10,383,808 or 33.86% over Fort Wayne's current revenues at existing rates. The parties have agreed that Fort Wayne should implement its 33.86% rate increase over three years with the first phase in the amount of 19.62% to be effective upon issuance of the final order in this Cause or January 1, 2013, whichever date is later. The parties further agreed that the second phase (i.e. Phase II) in the amount of 5.87% would be effective on January 1, 2014, and the third phase (i.e. Phase III) in the amount of 5.70% would be effective on January 1, 2015.

The Settlement Agreement requires Fort Wayne to complete and seek Commission approval of a cost of service study ("COSS") prior to implementation of the Phase II rate increase. The Settlement Agreement also sets forth a proposed agreed-upon procedural schedule that is intended to allow for the issuance of a final Commission order approving the COSS on or before December 1, 2013. The Settlement Agreement provides Fort Wayne will provide its COSS by January 10, 2013 and thereafter allows time for collaboration between the Parties regarding the COSS. The Parties agreed that the COSS would not affect Fort Wayne's revenue requirement; however, Fort Wayne would adjust its Phase II and III rates based upon the Commission-approved COSS.

In the Settlement Agreement, Fort Wayne and New Haven agreed to extend the Water Agreement originally dated September 26, 1960 ("Water Agreement") from October 31, 2012, to October 31, 2016. Prior to November 1, 2016, New Haven will only pay the Phase I, II, and III percentage increases regardless of the results of the Commission-approved COSS unless there is a deficiency of greater than \$250,000, in which case Fort Wayne will adjust New Haven's Phase II and Phase III rates to eliminate any deficiency in excess of \$250,000. The Settlement Agreement establishes a procedure for continuation, termination and/or alternative water service after November 1, 2016. Pursuant to the Settlement Agreement, after November 1, 2016, provided New Haven can develop its own source of supply or can secure a water supply from a source other than Fort Wayne that is environmentally sustainable and safe to produce, Fort Wayne may disconnect New Haven or New Haven may disconnect from Fort Wayne by providing the other party with at least three (3) years' written notice prior to the date of the proposed disconnection. If New Haven decides prior to November 1, 2016 to develop its own source of supply or obtain water from another provider, New Haven shall provide Fort Wayne a two (2) year notice of its proposed disconnection date.

The Parties stipulated and agreed that Fort Wayne should be authorized to issue the Proposed Bonds in an amount not to exceed \$40,000,000. Fort Wayne further agreed to market and issue the Proposed Bonds with an amortization that "wraps around" Fort Wayne's existing indebtedness and uses the freed up debt service from existing bonds as they are paid off. In this way, Fort Wayne's prospective principal and interest payments on the Proposed Bonds will increase as Fort Wayne pays off its existing indebtedness. If Fort Wayne is unable to successfully market the Proposed Bonds with a "wrapping" amortization on terms that are reasonably acceptable, Fort Wayne will issue the Proposed Bond with a level amortization. Within twenty-one (21) days after completing the final issuance of the Proposed Bonds, Fort Wayne will file a true-up report with the Commission identifying the exact amount of bonds that were issued, the exact amortization schedule, the interest rate on such bonds, and the annual debt service.

The Settlement Agreement further provides that if Fort Wayne spends any of the funds from its debt service reserve for any reason other than to make the last payment on the underlying debt, Fort Wayne will spend such funds only for the prepayment of principal and interest on any outstanding bond indebtedness or on capital expenditures for the water utility (Tank maintenance and painting is specifically excluded as a capital expense). Upon expenditure of any funds from its debt service reserve, Fort Wayne will provide a report to the Commission, New Haven, General Motors, and the OUCC consistent with the reporting requirements set forth in the Settlement Agreement.

Finally, Fort Wayne agreed to implement a computer program that allows Fort Wayne to produce financial statement for specific periods of time as requested, and agreed to provide General Motors, New Haven, the OUCC and the Commission with the reports that are also delivered annually delivered to the Board of Works and Common Council setting forth the status of Fort Wayne's capital improvements.

**6. Settlement Testimony of Parties.** Fort Wayne, New Haven, and the OUCC filed supplemental testimony for the purpose of supporting the Joint Stipulation and Settlement Agreement entered into by the Parties.

**A. Fort Wayne's Testimony.** Mr. Skomp testified on behalf of Fort Wayne regarding the financial aspects associated with the Settlement Agreement. Mr. Skomp explained that the Parties had agreed that Fort Wayne should increase its rates and charges for water service to reflect a total net annual revenue requirement in the amount of \$41,632,050, resulting in a total increase of 33.86% over Fort Wayne's current revenues at existing rates. Mr. Skomp stated that the Parties further agreed that the rate increase would be implemented in three phases. According to Mr. Skomp, the first phase would increase rates by 19.62% and be effective January 1, 2013. The second phase in the amount of 5.87% would be effective on January 1, 2014, and the third phase would be implemented on January 1, 2015 in the amount of 5.70%. Mr. Skomp stated that the Parties had reviewed and agreed to certain adjustments proposed by the OUCC in this case, and such adjustments were reflected in Exhibit A attached to the Settlement Agreement.

Mr. Skomp explained that the Settlement Agreement requires Fort Wayne to prepare a cost of service study based on the revenue requirements determined in this Cause, which would allow the Phase II and III rate increases to be applied based on the results of the COSS rather than in an across-the-board manner. Mr. Skomp noted that the Settlement Agreement provides specific procedural dates for the completion of the COSS which will hopefully allow the Commission to issue an order prior to December 1, 2013. Mr. Skomp explained that Fort Wayne would attempt to market the Proposed Bonds with an amortization that "wraps around" Fort Wayne's existing indebtedness. This structure will allow for combined debt service payments that are more nearly level than the structure originally proposed. Mr. Skomp indicated that Fort Wayne would use good faith efforts to market the wrapping structure while attempting to sell and close on the Proposed Bonds. Mr. Skomp stated that Fort Wayne would attempt to pursue other cost saving financing alternatives. If the market reacts unfavorably to the delay in principal payments, Mr. Skomp testified that Fort Wayne would attempt to pursue other cost saving financing alternatives before issuing the Proposed Bonds with a level amortization. Mr. Skomp described the Bond True-Up filing to be made within 21 days of the Bond sale and the Parties ability to respond there to.

Mr. Skomp briefly described the Settlement Agreement's requirements that Fort Wayne report expenditures from the debt service reserve fund that are not applied to retirement of final bond payments, the implementation of new software to produce financial statements, and Fort Wayne's requirement to report on capital improvements. Mr. Skomp believed that all requirements were reasonable.

**B. OUCC Settlement Testimony.** The OUCC filed the prefiled settlement testimony and exhibits of Charles E. Patrick and Jeffrey A. Fish. In his prefiled testimony and exhibits, Mr. Patrick described the due diligence performed by the OUCC, the relief requested by Fort Wayne in this Cause, the OUCC's proposed adjustments, and the financial aspects associated with the Settlement Agreement. Mr. Patrick stated that as a result of the Settlement Agreement, Petitioner's proposed proforma net revenue requirement has been reduced from

\$43,238,708 to \$41,632,050. According to Mr. Patrick, the reduction in the revenue requirement was primarily attributable to adjustments to operating expenses, taxes other than income, extensions and replacements, payment in lieu of taxes, debt service, and utility receipts tax. In addition, Mr. Patrick noted that the Settlement Agreement provides for a reduction to the total revenue requirement for test year interest income, a three (3) year average of connection fees, and test year cell tower revenue. Mr. Patrick explained that the agreed upon adjustments result in a 5.85% decrease to Fort Wayne's proposed revenue requirement through 2015.

Mr. Patrick also supported the "wrapping" amortization described in the Settlement Agreement. Witness Patrick explained that as existing debt is paid off, Fort Wayne will be able to pay off the new debt (i.e. the Proposed Bonds) more quickly which will, in turn, save rate payers approximately \$3,028,000 in interest. Mr. Patrick also explained that the revised amortization schedule reduces Fort Wayne's combined maximum annual debt service and would allow Fort Wayne to borrow less money. However, instead of borrowing less money, the Parties agreed that Fort Wayne would borrow the same amount of money it initially proposed, and apply the excess funds to reduce its proposed annual extensions and replacements in the amount of \$370,000 per year. Mr. Patrick included attachments to his testimony that summarized the agreed upon adjustments. These attachments were also included as Exhibit A to the Settlement Agreement. After briefly describing the Settlement Agreement, Mr. Patrick stated that he believed the Settlement Agreement balanced each Parties' interests, promoted the public convenience and necessity, and should be approved in its entirety by the Commission.

Mr. Fish briefly described Fort Wayne's water operations and provided an overview of Fort Wayne's proposed capital improvement projects. Mr. Fish testified that Fort Wayne's proposed capital improvements appeared reasonable. Witness Fish recommended that the Commission approve Fort Wayne's request for funding to complete the proposed projects and that the Commission approve the Settlement Agreement as in the public interest.

**C. New Haven Prefiled Direct Testimony.** New Haven presented the prefiled testimony of Gregory T. Guerrettaz. Mr. Guerrettaz described the process by which the Settlement Agreement was reached and stated that the Settlement Agreement was the result of extensive negotiation and on the whole was fair and reasonable. Mr. Guerrettaz testified that the Settlement Agreement was important to New Haven for several reasons. In comparison to the proposed approximate 40% increase, the agreed upon approximate 34% increase would help keep New Haven's largest operating expense, purchased water expense, lower for New Haven's 4,480 residential customers, 428 commercial customers, and 32 industrial customers. Mr. Guerrettaz testified that the COSS provisions in the Settlement Agreement allowed for collaborative consideration prior to implementation of the COSS in January, 2014, while still providing the Parties the opportunity to present competing COSSs if necessary. Mr. Guerrettaz also testified that the provisions in the Agreement which allowed for the potential phasing in of the COSS results as they related to New Haven were in the best interest of Fort Wayne and New Haven. Lastly, he pointed out the savings that result from the revised amortization of debt service expense. Mr. Guerrettaz testified each of the elements he described was critical to the Settlement. He recommended that the Settlement Agreement be approved in its entirety.

7. **Commission Discussion and Findings.** The Commission begins with the general statement that settlements presented to the Commission are not ordinary contracts between private parties. *U.S. Gypsum, Inc. v. Ind. Gas Corp.*, 735 N.E.2d 790, 803 (Ind. 2009). 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.

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. *U.S. Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coalition v. Public Serv. Co.*, 582 N.E.2d 330, 331 (Ind. 1991)). The Commission’s own procedural rules require that settlements be supported by probative evidence. 170 IAC 1-1.1-17(d). Therefore, before the Commission can approve the Settlement Agreement, we must determine whether the evidence in this Cause sufficiently supports the conclusions that the Settlement Agreement is reasonable, just, and consistent with the purpose of Indiana Code § 8-1-2, and that such agreement serves the public interest.

The evidence of record indicates that the Parties have provided the Commission with sufficient information to determine that the public interest can best be served by approving Fort Wayne’s Petition, as modified by the Settlement Agreement between the Parties. Specifically, pursuant to the Settlement Agreement, Fort Wayne would increase its rates by 33.86% over three phases. The first phase would begin on January 1, 2013, in the amount of 19.62%. Phases II and III would be implemented on January 1, 2014 and January 1, 2015, in the amounts of 5.87% and 5.70%, respectively, to be implemented as set out in the Settlement Agreement. The uncontroverted evidence of record reflects that the proposed capital improvements to Fort Wayne’s system are necessary to maintain Fort Wayne’s system in good working order and that the BAN should be defeased. Therefore, based on the evidence of record, the Commission finds that Fort Wayne should be authorized to increase its rates and charges and authorized to issue waterworks revenue bonds in an amount not to exceed \$40,000,000. Accordingly, we find Fort Wayne should be authorized to increase its rates and issue the Proposed Bonds as proposed in the Settlement Agreement.

Pursuant to the terms of the Settlement Agreement, on or before March 15, 2013, Fort Wayne shall file, under this Cause, its evidence supporting its proposed COSS. The Commission will issue a separate scheduling order addressing the parties’ filings and other procedural matters, and setting a hearing date for presenting COSS evidence to the Commission.

The following table summarizes the proposed increase as set forth in the Settlement Agreement:

	Per Settlement Phase I	Per Settlement Phase II	Per Settlement Phase III
<u>Revenue Requirements:</u>			
Operation & Maintenance Exp.	\$20,150,685	\$20,160,362	\$20,170,314
Taxes Other Than Income	943,970	1,028,216	1,058,352
Extensions and Replacements	4,989,000	6,705,000	8,873,000
Working Capital	-	-	-
Payment in Lieu of Taxes	2,254,209	2,254,209	2,254,209
Debt Service	9,065,047	9,461,779	9,466,542
Debt Service Reserve	-	-	-
 Total Revenue Requirements	 37,402,911	 39,609,566	 41,822,417
Less: Interest Income	7,528	7,528	7,528
Connection Fees	145,631	145,631	145,631
Cell Tower Revenue	68,199	68,199	68,199
Net Revenue Requirements	37,181,553	39,388,208	41,601,059
Less: Revenues at Current Rates	30,666,519	36,684,077	38,836,620
Less: Other Revenues at current rates	581,723	581,723	581,723
 Revenue Increase Required Excluding Taxes Divided By: Gross Revenue Conversion Factor	 5,933,311  0.986	 2,122,408  0.986	 2,182,716  0.986
Net Revenue Increase Required	\$6,017,557	\$2,152,544	\$2,213,707
 Recommended Percentage Increase	 19.62%	 5.87%	 5.70%

We have reviewed the Settlement Agreement and hereby approve the terms. A copy of the Settlement Agreement is attached hereto and made a part of this Order. The parties agree that the Settlement Agreement should not be used as precedent in any other proceeding or for any other purpose, except to the extent necessary to implement or enforce its terms. Consequently, with regard to future citation of the Settlement Agreement, we find that our approval herein should be construed in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434, (IURC, March 19, 1997).

**8. Confidentiality.** On July 25, 2012, General Motors filed its *Motion for a Protective Order and Finding of Confidential Information* (“*Motion*”). In its *Motion*, General Motors indicated that certain usage data related to water consumption was trade secret information, and therefore should not be disclosed by Petitioner. General Motors included with its *Motion* the Affidavit of David Shenefield, Site Utility Manager for General Motors. On July 27, 2012, Petitioner filed its *Response*. At the July 31, 2012 hearing, the parties presented additional argument on the *Motion* and the Presiding Officers took the matter under advisement. Following the hearing, on August 1, 2012, General Motors filed its written *Reply* to Petitioner’s *Response*, and also filed a written objection to Petitioner’s Late-Filed Exhibits, which were identified at the hearing but not offered at that time.

On August 10, 2012, Petitioner filed its *Supplemental Response* to the *Motion*. On August 14, 2012, General Motors filed its *Motion to Strike*, to which Petitioner filed its *Response* on August 21, 2012. Finally, on August 28, 2012, General Motors filed its *Reply*.

This Commission has previously found that customer-specific usage data may be constitute trade secret information, and thus, subject to confidential treatment pursuant to Ind. Code § 5-14-3-4 and Ind. Code § 24-2-3-2. *See, e.g., Northern Indiana Pub. Serv. Co.*, Cause No. 43969, at 72 (IURC, Dec. 21, 2011). As General Motors stated at the hearing, usage information related to the inputs into its industrial process can provide important information related to its business operations, which are not generally known and which provide value to General Motors in having them remain confidential. The information at issue in this case, like in Cause No. 43969, is specific customer utility usage data, and Mr. Shenefield adequately set forth the basis for confidential treatment of the GM-specific water usage.

However, Petitioner has previously disclosed such usage information for prior years, and that information is no longer subject to confidential treatment due to its prior public disclosure. Petitioner asserts that its prior bond issuances require that it continue to disclose the usage and revenue information of its largest customers to its bondholders as an ongoing condition of the bond issuance. However, our review of the Official Statements Petitioner offered at the hearing show that only the identity of the largest customers is required to be disclosed. *See, e.g., Pet. Ex. 12 at G-3* (“Appendix B—Largest Waterworks Customers”). Thus, disclosure of customer-specific information is not required by the continuing disclosure requirements of the underlying bonds. That Petitioner improperly released this information in the past provides no justification for continued disclosure of the confidential information.

Accordingly, we grant General Motor's request for a protective order on a going forward basis.<sup>1</sup>

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

1. The Settlement Agreement is hereby approved.
2. The City of Fort Wayne, Indiana, is hereby authorized to increase its rates by 33.86% to reflect a total net revenue requirement in the amount of \$41,632,050, resulting in a total increase of \$10,383,808. Fort Wayne should implement its 33.86% rate increase as follows:
  - (i) 19.62% on January 1, 2013;
  - (ii) 5.87% on January 1, 2014; and
  - (iii) 5.70% on January 1, 2015.
3. The Fort Wayne shall implement the Phases II and III rate increases as set out in the Settlement Agreement.
4. The Fort Wayne is hereby authorized to issue waterworks revenue bonds (i.e., the Proposed Bonds) in a principal amount not to exceed \$40,000,000 in accordance with the provisions and for the purposes described herein.
5. Within twenty-one (21) days after completing final issuance of the Proposed Bonds, Fort Wayne shall file a true-up report with the Commission identifying the exact amount of bonds that were issued, the exact amortization schedule, the interest rate on such bonds, and the annual debt service. The other parties shall have ten (10) days from the filing of the true-up report to respond to the report. To the extent the cost of issuance (including the increase in the combined debt service reserve requirements) or interest rate(s) materially impact revenue requirements, Fort Wayne will adjust or true-up its rates to reflect the same.
6. The other reporting requirements stated in the Settlement Agreement are approved.
7. In accordance with Ind. Code § 8-1-2-85, Fort Wayne shall pay a fee of twenty-five cents (\$0.25) for each one hundred dollars (\$100) of water utility revenue bonds issued, to the Secretary of the Commission, within thirty (30) days of the receipt of the financing proceeds authorized herein.

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<sup>1</sup> At the hearing, Petitioner stated that its sewer bonds contain similar disclosure provisions. Although not before us, there is no justification for disparate treatment of the confidential information regardless of whether the bonds are issued on behalf of the water or sewer utility. Given that our protective order is directed to the parties, Fort Wayne should also treat General Motors customer specific usage sewer information (which is based on water usage) as confidential on a going forward basis.

8. In accordance with Ind. Code § 8-1-2-70, Petitioner shall pay the following itemized charges within 20 days of the date of this Order, into the Treasury of the State of Indiana, through the Secretary of the Commission.

Commission Charges	\$ 2,360.43
OUCC Charges	\$20,174.67
Legal Advertising Charges	<u>\$ 243.74</u>
Total	\$22,778.84

9. On or before March 15, 2013, Fort Wayne shall file, under this Cause, its evidence supporting its proposed COSS.

10. General Motors usage information is determined to be confidential and exempt from public access and disclosure pursuant to Ind. Code § 24-2-3-2 and § 5-14-3-4. Pursuant to Ind. Tr. R. 26(C), the Commission enters a Protective Order and orders that the parties to this Cause not disclose such information on a going forward basis.

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

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

**APPROVED:      OCT 17 2012**

**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**

STATE OF INDIANA

FILED

INDIANA UTILITY REGULATORY COMMISSION

JUL 03 2012

INDIANA UTILITY  
REGULATORY COMMISSION

PETITION OF THE CITY OF FORT WAYNE, )  
INDIANA FOR APPROVAL TO ADJUST ITS )  
RATES AND CHARGES AND ISSUE BONDS )  
TO PROVIDE FUNDS TO DEFEASE )  
EXISTING INDEBTEDNESS AND FINANCE )  
IMPROVEMENTS TO ITS WATERWORKS )

CAUSE NO. 44162

JOINT STIPULATION AND SETTLEMENT AGREEMENT

This Joint Stipulation and Settlement Agreement (“Settlement Agreement”) is entered into this 3<sup>rd</sup> day of July, 2012, by and between the City of Fort Wayne, Indiana (“Fort Wayne”), the City of New Haven, Indiana (“New Haven”), General Motors LLC (“GM”), and the Office of the Utility Consumer Counselor (“OUCC”) (collectively, the “Parties”), 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 February 27, 2012, Fort Wayne initiated this Cause by filing a Petition with the Commission requesting authority to adjust its rates and charges and issue bonds to provide funds to defease existing indebtedness and finance improvements to its waterworks.

2. Prefiled Evidence of Parties. In support of its Petition, Fort Wayne filed the prefiled testimony and exhibits of Matthew A. Wirtz, P.E., and John R. Skomp, C.P.A., on February 29, 2012.

3. Settlement. Through analysis, discussion, and extensive negotiation, as aided by their respective technical staff and experts, Fort Wayne, New Haven, GM, and the OUCC have

now agreed on the terms and conditions as described herein that resolve all issues between them in this Cause.

4. **Revenue Requirement, Rates, and Charges.** The Parties agree that Fort Wayne should be authorized to increase its rates and charges for water service to reflect a total net revenue requirement in the amount of \$41,486,677 (\$41,632,050 when including the \$145,373 for utility receipts tax), resulting in a total increase of \$10,238,435 (\$10,383,808 after considering the \$145,373 in utility receipts tax;) or 33.86% over Fort Wayne's current revenues at existing rates. The Parties further agree that Fort Wayne shall implement its 33.86% rate increase over three (3) phases with the first phase ("Phase I") in the amount of 19.62% to be effective upon the issuance of the final order in this Cause or January 1, 2013, whichever date is later. The second phase ("Phase II") in the amount of 5.87% will be effective on January 1, 2014, and the third phase ("Phase III") will be effective on January 1, 2015, in the amount of 5.70%. Phase II and Phase III rates will be implemented as set out in Paragraph 5 below. Attached to the Settlement Agreement as Exhibit A is a schedule that summarizes the agreed upon revenue requirement and resulting increase. Exhibit A also identifies the different adjustments agreed to by the Parties, including the proposed amortization of the Revenue Bonds as more particularly described below in paragraph 9.

5. **Cost of Service Study.** Fort Wayne will complete and seek Commission approval of a cost of service study ("COSS"), which will include the usage data, costs, and revenues of all customers, after issuance of the Order in this Cause but prior to implementation of its Phase II rates. GM and New Haven agree to provide all available consumption, usage, and other information for the previous five (5) years that is necessary to facilitate preparation of the COSS. GM will provide information pertaining to GM's Fort Wayne plant only. The Parties will work collaboratively to arrive at acceptable industry cost allocation principles to be used in

the COSS. Fort Wayne shall provide a draft COSS prior to finalizing it to allow for input from and discussions with the other Parties. The Parties agree to the following procedural schedule that allows for the issuance of a final Commission order approving the COSS on or before December 1, 2013:

- (i) Fort Wayne will complete a draft of the COSS and provide a hard and electronic copy with all formula intact along with a complete copy of all supporting documentation to GM, New Haven and the OUCC by January 10, 2013.
- (ii) GM, New Haven, and OUCC will provide comments, input, and suggestions by January 31, 2013.
- (iii) Fort Wayne will review the input and information provided by GM, New Haven, and OUCC, and, the Parties agree to have discussions on any open unresolved items and use their best efforts to resolve these open items by February 28, 2013.
- (iv) Fort Wayne will finalize and file its final COSS with the Commission with supporting testimony, exhibits and work papers by March 15, 2013.
- (v) GM, New Haven, and OUCC shall file any responsive testimony and exhibits with the Commission by April 15, 2013.
- (vi) All cross-answering testimony shall be filed with the Commission by April 29, 2012.
- (vii) Fort Wayne shall file rebuttal testimony by May 6, 2013.
- (viii) The Parties request the Commission hold an evidentiary hearing on or about June 3, 2013.
- (ix) The Parties request the Commission issue a final order on COSS by November 20, 2013.
- (x) Fort Wayne implements results of Commission-approved COSS on January 1, 2014.
- (xi) Discovery turn around will be ten (10) days until April 29, 2013 where after it will be five (5) days. All discovery requests, responses, and objections shall be served on all Parties

The Parties agree that the COSS shall not affect Fort Wayne's revenue requirement as set forth in Exhibit A (and approved in this Cause); however, Fort Wayne shall adjust its Phase II and III rates based upon the results of the Commission-approved COSS. If the Commission does not issue an Order prior to January 1, 2014, Fort Wayne will implement its Phase II rates on an across the board on an interim basis until the Commission issues its Order approving the COSS and Fort Wayne will, within sixty (60) days after issuance of the Order, readjust the Phase II rates to reflect the COSS results for all rate classifications, and Fort Wayne will, within sixty

(60) days after issuance of the Order, readjust the Phase II rates to reflect the COSS results for all classifications from January 1, 2014 forward.

6. **Extension of New Haven Water Agreement.** Fort Wayne will extend the Water Agreement with New Haven (originally dated September 26, 1960) (“Water Agreement”) from October 31, 2012, to October 31, 2016. All other terms in the Water Agreement not inconsistent with this Settlement Agreement shall remain in full force and effect until termination, and New Haven shall not be subjected to any out of town rates or charges while the Water Agreement is in effect. Prior to November 1, 2016, New Haven will only pay the Phase I, II, and III percentage increases as set forth in Exhibit A regardless of the results of the Commission approved COSS. If, however, the Commission-approved COSS later demonstrates that the rates paid by New Haven generate annual proforma revenues of at least \$250,000 less than the full cost of serving New Haven, Fort Wayne will adjust New Haven’s Phase II and Phase III rates to eliminate any deficiency in excess of \$250,000.

7. **Continuation of Service after November 1, 2016.** On November 1, 2016, New Haven shall: (i) pay the rate as determined in the approved COSS; or (ii) find an alternative source of water supply. Alternatively, Fort Wayne and New Haven may, in their sole discretion, mutually agree to extend the Water Agreement on similar or modified terms; however, other Fort Wayne customers will not be required to pay the difference between New Haven’s contract rate and its cost of service after October 31, 2016. Fort Wayne and New Haven agree to meet beginning on January 1, 2014 and complete discussions prior to November 1, 2016, regarding the possibility of an extension, termination, and/or alternative water service to New Haven. If New Haven decides prior to November 1, 2016, to develop its own source of supply or obtain water from another provider, New Haven shall provide to Fort Wayne at least two (2) years

notice of the proposed date on which New Haven will disconnect from Fort Wayne's water system.

8. **Notice of Disconnection.** After November 1, 2016, provided New Haven can develop its own source of supply, or can secure a water supply from a source other than Fort Wayne, that is environmentally sustainable and safe to produce, Fort Wayne may disconnect New Haven or New Haven may disconnect from Fort Wayne by providing the other party with at least three (3) years written notice prior to the date of the proposed disconnection.

9. **Authority to Issue Long Term Debt.** The Parties stipulate and agree that Fort Wayne should be authorized to issue revenue bonds ("Revenue Bonds") in an amount not to exceed Forty Million Dollars (\$40,000,000). The proceeds from the revenue bond will be used to pay off an existing bond anticipation note (see Cause No. 44024); pay certain costs of issuance; fund a portion of the combined debt service reserve based on the combined maximum annual debt service; and pay to complete certain capital improvements that are identified in Exhibit D, pp. 17-23, in Mr. Skomp's February 28, 2012, Rate and Financing Report (i.e. Petitioner's Exhibit 5).

10. **Terms of Financing and True-Up Report.** Consistent with Exhibit A, Fort Wayne will seek to market and issue the Revenue Bonds with an amortization that "wraps around" Fort Wayne's existing indebtedness. In this way, Fort Wayne's prospective principal and interest payments on the Revenue Bonds will increase as Fort Wayne "pays off" its existing indebtedness. If Fort Wayne is unable to successfully market the Revenue Bonds with a "wrapping" amortization on terms that are reasonably acceptable, Fort Wayne will issue the Revenue Bonds with a level amortization (see Petitioner's Exhibit 5, Crowe Horwath Rate and Financing Report, page 25). Within twenty-one (21) days after completing the final issuance of the Revenue Bonds, Fort Wayne shall file a true-up report with the Commission identifying the

exact amount of bonds that were issued, the exact amortization schedule, the interest rate on such bonds, and the annual debt service. The other Parties shall have ten days from the filing of the true up report to respond to the report. To the extent the costs of issuance (including the increase in the combined debt service reserve requirements) or interest rate(s) materially impact revenue requirements, Fort Wayne will adjust or “true-up” its rates to reflect the same.

11. **Expenditures from Debt Service Reserve.** If Fort Wayne spends any of the funds from its Debt Service Reserve for any reason other than to make the last payment on the underlying debt, Fort Wayne agrees to spend such funds for only the prepayment of principal and interest on any outstanding bond indebtedness, on capital projects, and/or on capital expenditures for the water utility (excluding tank maintenance and painting). Upon expenditure of any funds from its Debt Service Reserve, Fort Wayne will provide a report to the Commission, New Haven, GM, and the OUCC within five (5) business days after such expenditure that states: (i) how much Fort Wayne spent from its Debt Service Reserve; (ii) why and on what it spent the funds from its Debt Service Reserve; (iii) a cite to and quote from any applicable loan documents that allow Fort Wayne to spend funds from its Debt Service Reserves; (iv) how Fort Wayne plans to replenish its Debt Service Reserve; and (v) any cost cutting activities Fort Wayne has implemented to forestall spending funds from its Debt Service Reserve.

12. **Fort Wayne’s Books and Records.** Fort Wayne will implement a computer program that allows Fort Wayne to: (i) convert current trial balances and financial statements from its current software to a format that comports with the NARUC system of accounts; and (ii) produce financial statements for specific periods of time as requested.

13. **Fort Wayne’s Capital Expenditures.** On an annual basis, Fort Wayne will provide the Parties with the reports to the Board of Works and Common Council that set forth the status of the capital expenditures.

14. **Admissibility and Sufficiency of Evidence.** The Parties stipulate to the admissibility of the testimony and exhibits presented by the Parties. The Parties agree that the prefiled evidence constitutes substantial evidence sufficient to support this Settlement Agreement and provides an 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.

15. **Non-Precedential Effect of Settlement.** The Parties agree that the facts in this Cause are unique and all issues presented are 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, and is without prejudice to and shall not constitute a waiver of any position that any party may take with respect to any issue in any future regulatory or non-regulatory proceeding.

16. **Authority to Execute.** The undersigned hereby represent and agree that they are fully authorized to execute the Settlement Agreement on behalf of their designated clients who will hereafter be bound thereby.

17. **Proposed Order.** The Parties hereby agree to the issuance by the Commission of a proposed final order in the form agreed to by the Parties. The Parties agree to submit a proposed order by July 13, 2012.

18. **Approval of Settlement Agreement in its Entirety.** 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, the entire Settlement Agreement shall be null and void and deemed withdrawn, unless otherwise agreed to in writing by all Parties. The Parties further agree that in the event the Commission does not issue a Final Order in the form

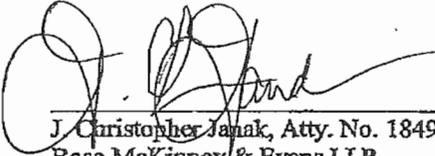
that reflects the Agreement described herein, or that is not accepted in writing by all the Parties, an attorney's conference should be promptly convened to schedule the filing of litigation testimony and to set a new hearing date. The Commission should thereafter rule based on the litigation evidence of record in this proceeding. The Parties agree that, in such event, the evidence of record and any post-hearing filings should be considered by the Commission as if no settlement had been reached, unless otherwise agreed by all Parties in a writing that is filed with the Commission. All settlement discussion shall be treated as privileged and confidential.

19. **Agreement is Binding on Successors and Assigns.** The Parties stipulate and agree that Fort Wayne's service touches and concerns each of the properties served by Fort Wayne's utility, and this Settlement Agreement shall inure to the benefit of, and be binding upon, each party's successors, heirs, and assigns.

20. **Resolution of Pending Discovery Matters.** With approval of the Settlement Agreement, all pending discovery motions and disputes are rendered moot and withdrawn.

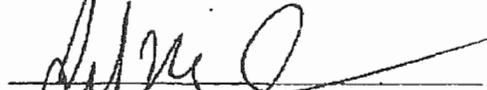
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**CITY OF FORT WAYNE**



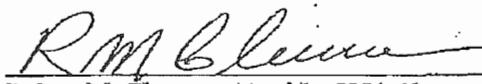
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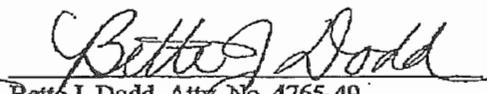
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