

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

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

**BROWN COUNTY WATER UTILITY, INC.'S SUBMISSION OF  
 PHASE 2 STIPULATION AND SETTLEMENT AGREEMENT**

Comes now Brown County Water Utility, Inc., by counsel, and submits a Phase 2  
 Stipulation and Settlement Agreement in this Cause.

**FILED**  
 November 12, 2019  
 INDIANA UTILITY  
 REGULATORY COMMISSION

Respectfully submitted,

/s/ Peter Campbell King  
 Peter Campbell King  
 Attorney for Petitioner

/s/ Mark W. Cooper  
 Mark W. Cooper  
 Attorney for Petitioner

Certificate of Service

The undersigned hereby certifies that the foregoing Submission was served this 12<sup>th</sup> day of November, 2019, by electronic mail and/or U.S. mail, postage prepaid, upon the following counsel of record:

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**PHASE 2 STIPULATION AND SETTLEMENT AGREEMENT**

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

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

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

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

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

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

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

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

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

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

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

B. BCW will share all water service revenue equally with Nashville which BCW receives for water service to any current and future customer within the Area, after BCW deducts the cost of water sold<sup>1</sup> to any current and future customer in the Area.

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

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

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

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

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

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

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

The Parties stipulate and agree that the Settlement is solely the result of compromise in the settlement process and, except as provided herein, is without prejudice to and shall not constitute a waiver of any position that either of the Parties may take with respect to any issue or item whether or not resolved herein, in any future regulatory or other proceeding.

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

Brown County Water Utility, Inc.

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

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Roger Hickey, Petitioner's Secretary

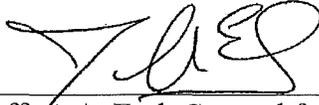
Date: \_\_\_\_\_

Indiana Office of Utility Consumer Counselor

By:   
\_\_\_\_\_  
Scott Franson, Deputy Consumer Counselor

Date: November 12, 2019

Town of Nashville, Indiana

By:   
\_\_\_\_\_  
Jeffery A. Earl, Counsel for Nashville

Date: 12 November 2019

Brown County Water Utility, Inc.

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

ATTEST:

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