

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE INDIANA UTILITY)
REGULATORY COMMISSION'S)
INVESTIGATION INTO THE IMPACTS OF THE)
TAX CUTS AND JOBS ACT OF 2017 AND)
POSSIBLE RATE IMPLICATIONS UNDER)
PHASE 1 AND PHASE 2 FOR INDIANA)
AMERICAN WATER COMPANY, INC)

CAUSE NO. 45032 S4

OUCC SETTLEMENT TESTIMONY

OF

MARGARET A. STULL - PUBLIC'S EXHIBIT NO. 9

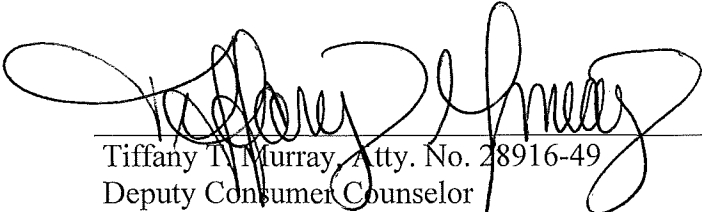
ON BEHALF OF THE

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR

March 18, 2019

Respectfully Submitted,

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR


Tiffany T. Murray, Atty. No. 28916-49
Deputy Consumer Counselor

CERTIFICATE OF SERVICE

This is to certify that a copy of the *Office of Utility Consumer Counselor Settlement Testimony of Margaret A. Stull* has been served upon the following counsel of record in the captioned proceeding by electronic service on March 18, 2019.

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SETTLEMENT TESTIMONY OF OUCC WITNESS MARGARET A. STULL
CAUSE NO. 45032-S4
INDIANA AMERICAN WATER COMPANY, INC.

I. INTRODUCTION

1 **Q: Please state your name and business address.**

2 A: My name is Margaret A. Stull, and my business address is 115 W. Washington St.,
3 Suite 1500 South, Indianapolis, Indiana 46204.

4 **Q: By whom are you employed and in what capacity?**

5 A: I am employed by the Indiana Office of Utility Consumer Counselor (“OUCC”) as
6 a Chief Technical Advisor in the Water/Wastewater Division.

7 **Q: Did you previously submit direct testimony in this proceeding?**

8 A: Yes. I filed direct testimony in Phase 1 of this proceeding that was designated as
9 Public’s Exhibit No. 1.

10 **Q: What is the purpose of your testimony?**

11 A: I will explain the OUCC’s support of the settlement agreement (“Settlement”) in
12 Cause No. 45142 between Indiana American Water Company, Inc. (“Indiana
13 American” or “Petitioner”), the OUCC, the Indiana American Industrial Group,
14 City of Crown Point, Town of Schererville, Town of Whiteland, Sullivan-Vigo
15 Rural Water Corporation, Citizens Action Coalition, and Indiana Community
16 Action Association, Inc. (collectively, the “Settling Parties”)¹ and how the public

¹ The Settling Parties listed are all of the parties to Indiana American’s general rate case proceeding, Cause No. 45142. The Indiana Industrial Group and U.S. Steel are separate parties to this tax subdocket proceeding and join in and agree to be bound by Paragraph 3 of the Settlement.

1 interest will be served if the Commission approves the proposed Settlement.
2 Specifically, I discuss Paragraph 3 of the Settlement, which addresses the
3 agreement among the parties regarding the issues related to the Tax Cuts and Jobs
4 Act of 2017 (“TCJA”).

5 **Q: Which aspects of the Settlement will be addressed below?**

6 A: I discuss the terms of the Settlement regarding the outstanding Phase 2 income tax
7 issues. Specifically, I address the agreement reached on (1) the regulatory liability
8 resulting from Indiana American’s over-collection of federal income tax during
9 2018, (2) the return to customers of protected excess accumulated deferred income
10 taxes (“EADIT”), and (3) the return to customers of unprotected EADIT.

11 **Q: In your opinion, is the Settlement in the public interest?**

12 A: Yes. There are a number of overall customer benefits generated by the Settlement,
13 not least of which is a substantive reduction to the overall rate increase sought by
14 Petitioner in Cause No. 45142. The Settlement is a product of intense, arms-length
15 negotiations, requiring each party to compromise on difficult issues. In order to
16 make such compromises, each party must assess its litigation risk that the tribunal
17 will find the other side’s case more compelling. The Settlement strikes an
18 appropriate balance between the interest of the ratepayer and of Indiana American,
19 while at the same time, the numerous customer benefits outlined in the Settlement
20 and described in detail below, lead the OUCC, as the statutory representative of all
21 ratepayers, to conclude that the Settlement is an equitable resolution, supported by
22 the evidence, and should be approved.

1 **Q: What did Indiana American propose in Phase 2 of this case?**

2 A: Indiana American proposed the regulatory liability of \$5,821,888, representing the
3 over-collection of federal income tax expense during 2018, be used to fund
4 customer lead line replacements rather than be credited to customers. Indiana
5 American further proposed that all EADIT be considered protected and be returned
6 to customers based on the average rate assumption method (“ARAM”). However,
7 Indiana American further proposed that, due to its inability to calculate ARAM at
8 this time, the issue of returning EADIT be dealt with in the context of its general
9 rate case, Cause No. 45142. In that Cause, Indiana American continued to assert it
10 could not yet calculate ARAM and proposed further deferral of EADIT to Step 2
11 of its general rate case, which would be implemented in May 2020.

II. SETTLEMENT

12 **Q: Does this Settlement resolve all of the pending Phase 2 income tax issues as a**
13 **result of the TCJA?**

14 A: Yes. This Settlement addresses (1) the refund of the regulatory liability created by
15 Indiana American’s over-collection of federal income tax expense during the period
16 January 1, 2018 through July 31, 2018; (2) amortization of protected excess
17 EADIT; and (3) amortization of unprotected EADIT.

18 **Q: To what have the Settling Parties agreed regarding the regulatory liability**
19 **created by the over-collection of federal income tax expense during 2018?**

20 A: The Settling Parties have agreed the \$5,821,888 balance of Indiana American’s
21 regulatory liability, created as a result of the Commission’s January 3, 2018 order
22 in Cause No. 45032, shall be flowed to customers as a bill credit commencing with
23 implementation of Step 2 rates. This bill credit will be flowed back ratably over a

1 twelve-month period and will be allocated among customer classes in accordance
2 with the allocation methodology associated with the underlying rates that generated
3 the regulatory liability.

4 **Q: To what have the Settling Parties agreed regarding the amortization of**
5 **EADIT?**

6 A: The Settling Parties have agreed that, for purposes of Step 1 rates, Indiana
7 American will use an amortization period of 41.49 years as provided in Indiana
8 American's rebuttal in Cause No. 45142. The Settling Parties agree this estimate
9 produces a result that is approximately the same as using the average rate
10 assumption method. Subject to other terms in the Settlement, this amortization
11 period will be applied to the entirety of Indiana American's EADIT balance,
12 including unprotected EADIT.

13 **Q: To what have the Settling Parties agreed regarding the treatment of**
14 **unprotected EADIT created as a result of Indiana American's tax repair**
15 **expense deduction?**

16 A: The Settling Parties agree that Indiana American will seek a Private Letter Ruling
17 ("PLR") from the Internal Revenue Service ("IRS") requesting a determination
18 whether the Commission has the discretion to order an amortization for EADIT
19 related to Indiana American's repairs deduction that is faster than ARAM.
20 Importantly, the Settling Parties agree the PLR request is not an opportunity for
21 advocacy for one outcome or another and that the PLR request will be drafted using
22 neutral and unbiased language. To achieve this agreement, the Settling Parties will
23 confer on the wording of the draft PLR request to objectively frame the issue before

1 the PLR request is submitted to the IRS for resolution subject to IRS guidelines and
2 requirements.

3 Indiana American will file notice of the results of the ruling with the
4 Commission and all parties to the tax subdocket within 10 business days of receipt
5 of the PLR. The Settling Parties agreed to take no position at this time as to whether
6 Indiana American can recover costs associated with the PLR request.

7 **Q: What have the Settling Parties agreed if the IRS rules that repairs related**
8 **EADIT must be amortized using ARAM?**

9 A: If the IRS issues a PLR ruling that amortization of repairs related EADIT cannot
10 be faster than ARAM without causing a normalization violation, the Settling Parties
11 agree Indiana American will continue to use the estimate providing annual
12 amortization of \$1.7 million for purposes of Step 1 and Step 2 rates until Indiana
13 American's next general rate case, at which point the EADIT amortization will be
14 trued up using the actual ARAM calculation. In that event, the Commission shall
15 issue an order to dismiss the tax subdocket proceeding.

16 **Q: What have the Settling Parties agreed if the IRS rules that repairs related**
17 **EADIT amortization can be amortized faster than ARAM and is at the**
18 **discretion of the Commission?**

19 A: If the IRS issues a PLR ruling that the Commission has discretion to order
20 amortization for EADIT related to Indiana American's repairs deduction that is
21 faster than ARAM, or otherwise determining that amortization using non-
22 normalized accounting would be appropriate, the Settling Parties agree to seek that
23 the Commission establish, by order in this tax subdocket, the appropriate
24 amortization period for such non-normalized EADIT and order Indiana American

1 to file revised rates to reflect the revised amortization for the non-normalized
2 EADIT (unprotected) along with the true-up for the actual ARAM calculation for
3 all EADIT required to be normalized (protected).

4 **Q: Do the terms of the Settlement generate customer benefits?**

5 A: Yes. In its testimony in Cause No. 45032-S4, Indiana American advocated that the
6 regulatory liability created by excess income tax expense in 2018 should be used
7 for customer owned lead line replacements. The Settlement provides for a refund
8 of these dollars instead. Moreover, the Settlement terms on the PLR provide a path
9 forward to providing customers with a full EADIT refund that complies with IRS
10 guidance, while at the same time, an EADIT refund based on ARAM will be
11 initiated so there is no further delay of the customer refund while the PLR is
12 pending.

13 **Q: Is the public interest served by the tax terms of the Settlement?**

14 A: Yes. The issues at play in Indiana American's tax subdocket, which was highly
15 contested and has been fully briefed, are interconnected with setting Indiana
16 American's ongoing revenue requirement in Cause No. 45142. Reaching a
17 consolidated resolution, as this Settlement does, is efficient and promotes
18 administrative economy.

III. CONCLUSION

19 **Q: Does the Settlement represent a fair compromise of disputed issues that**
20 **reasonably protect consumer interests?**

21 A: Yes. The customer benefits generated by the Settlement are detailed in my
22 testimony. The Settlement represents a compromise that the OUCC and other

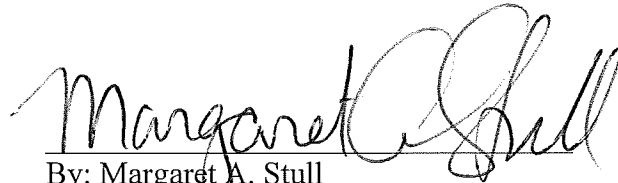
1 Settling Parties support as fair, reasonable, and beneficial to both the utility and
2 customers. The Settling Parties also value the certainty and speed of implementing
3 negotiated outcomes such as this. The Settlement is in the public interest, supported
4 by the evidence, and should be approved.

5 **Q: Does this conclude your settlement testimony?**

6 **A: Yes.**

AFFIRMATION

I affirm the representations I made in the foregoing testimony are true to the best of my knowledge, information, and belief.



By: Margaret A. Stull
Cause No. 45032 S4
Indiana Office of
Utility Consumer Counselor

3/18/19

Date: _____