

ORIGINAL
JMA
SJK

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF BOONVILLE NATURAL GAS) CAUSE NO. 45215
CORPORATION FOR AUTHORITY TO CHANGE)
ITS RATES, CHARGES, TARIFFS, RULES, AND) APPROVED: OCT 29 2019
REGULATIONS)

ORDER OF THE COMMISSION

Presiding Officers:
Sarah E. Freeman, Commissioner
David E. Veleta, Senior Administrative Law Judge

On March 27, 2019, Boonville Natural Gas Corporation (“Petitioner” or “Boonville”) filed its Petition and case-in-chief seeking authority to change its existing rates, charges, tariffs, rules, and regulations. Contemporaneously with filing its Petition, Boonville prefiled the Testimony and Exhibits of the following witnesses: John R. Lewellyn, President of the Petitioner; Paul M. Lewellyn, Vice President of Petitioner; Bonnie J. Mann, Certified Public Accountant and Principal of LWG CPAs & Advisors (“LWG”); Earl L. Ridlen III, Certified Public Accountant, Financial Advisor and Managing Partner of LWG; and Kerry A. Heid, Licensed Professional Engineer and Utility Rate Consultant.

On March 28, 2019, Petitioner, along with the Indiana Office of Utility Consumer Counselor (“OUCC”), filed a Stipulation and Partial Settlement Agreement (“Partial Settlement”) reflecting that Petitioner and the OUCC (collectively the “Parties”) had agreed on the cost of equity capital. On April 18, 2019, the Parties filed a Motion on Agreed Procedural Schedule related to the schedule they proposed to follow in this Cause. Based on such Motion, this Commission through its docket entry established the procedural schedule for this proceeding. Consistent with such schedule, the OUCC filed its case-in-chief on June 28, 2019 consisting of the Testimony and Exhibits of the following witnesses: Farheen Ahmed¹, Amy E. Larsen, Isabelle L. Gordon, Leon A. Golden, Heather R. Poole, Jennifer L. Reed², and Brien R. Krieger.

On July 26, 2019, Petitioner filed the Rebuttal Testimony and Exhibits of: Bonnie, J. Mann; Earl, L. Ridlen; and Kerry A. Heid.

On August 23, 2019, the Parties advised the Commission that they had reached a settlement in principle on all issues and requested an opportunity to reduce their settlement to writing. The Commission by docket entry continued the hearing in this Cause originally scheduled for August 27, 2019 to October 2, 2019 and ordered the Parties to file any further settlement agreement and settlement evidence by September 16, 2019. The Parties filed their Stipulation and Settlement Agreement On All Issues (“Settlement Agreement”) on September 16, 2019. Petitioner also filed the Settlement Testimony of its witnesses Paul Lewellyn and Earl Ridlen in support of the

¹ Ms. Ahmed’s testimony was subsequently adopted by witness Poole on October 1, 2019.
² Ms. Reed’s testimony was subsequently adopted by witness Leja D. Courter on September 17, 2019.

Settlement Agreement. The OUCC filed the Settlement Testimony of its witness Heather Poole also in support of the Settlement Agreement.

On October 2, 2019 at 2:30 p.m. in Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana, the Commission convened an evidentiary hearing in this Cause. Petitioner and the OUCC appeared, presented their respective prefiled testimonies and exhibits, offered their Partial Settlement and Settlement Agreement, and participated in such evidentiary hearing. Proofs of Publication of the notice of the evidentiary hearing were incorporated into the record and placed in the official files of the Commission.

Based on the applicable law, and the evidence presented by the Parties, the Commission now finds:

1. **Notice and Jurisdiction.** Due, legal, and timely notice of the public evidentiary hearing in this Cause was given and published as required by law. Petitioner is a public utility as defined by Ind. Code § 8-1-2-1. Pursuant to Ind. Code §§ 8-1-2-1 and 8-1-2-42.7, the Commission has jurisdiction over this Petitioner and the subject matter of this Cause.

2. **Petitioner's Characteristics.** Petitioner is a corporation duly organized and existing under the laws of the State of Indiana. Petitioner's principal office is located at 1425 North Rockport Road, Boonville, Indiana. Petitioner is a public utility currently providing natural gas service to its customers in both rural and municipal areas in Warrick County, Indiana. As of February 2019, Petitioner serves approximately 4,900 customers.

3. **Existing Rates, Test Year, and Relief Requested.** Petitioner's current base rates are those established by this Commission in Cause No. 44129 on November 7, 2012. Such rates have been reduced pursuant to the Commission's February 16, 2018 Order in Cause No. 45032. The test year for this proceeding proposed by Petitioner is June 30, 2018 adjusted for changes that are fixed, known, and measurable, and occurring within 12 months following the end of such test year. Petitioner's cutoff date to determine the used and useful nature and the value of its rate base is September 30, 2018. Based on its case-in-chief, the Petitioner sought to increase its operating revenues by 9.33% which represents an additional \$356,915 of increased operating revenue over adjusted test year.

4. **Evidence of the Parties.**

a. **Petitioner's Direct Case-in-Chief.** Petitioner's Direct Case-in-Chief includes the testimony of Petitioner's witness John R. Lewellyn, who explained his role as President of Petitioner and discussions with the management of Petitioner, with counsel of record, with LWG, and with Kerry Heid prior to initiating this base rate case. Mr. Lewellyn explained his professional background, described his work with this Petitioner since 1978, and explained this rate case was also designed to establish an approach which would meet the Commission's Orders in Cause No. 45032 S6. He explained Petitioner's base rates have not been increased since November of 2012, though Petitioner has added plant since that time, customers have been added, operating expenses have increased, and base rates have been decreased due to reductions required by Cause Nos. 44129 and 45032.

The testimony of Petitioner's witness Mann described her professional background, work with LWG, noted that she is licensed as a Certified Public Accountant, and has previously testified on behalf of this Petitioner before the Commission in other matters. Ms. Mann summarized the scope of the work of LWG on behalf of Petitioner, which included the preparation of testimony and exhibits in this Cause. Ms. Mann explained that she had reviewed Petitioner's books and records, concluding that Petitioner was not covering its operating expenses or earning a reasonable return on its rate base used to provide natural gas service to its customers. She described reducing her conclusions to certain accounting schedules, which she offered as her Exhibit BJM-1. She concluded that based on her analysis and the schedules of Exhibit BJM-1, Petitioner should be authorized to earn a net operating income of \$460,276, on an original cost rate base of \$5,833,645, which would require an increase in operating revenue of \$356,915³. In addition to her accounting schedules and proposed financial results, Ms. Mann addressed the Commission's Order in Cause No. 45032 S6 as to the number of new customers added since Petitioner's last base rate case and calculations relative to Excess Accumulated Deferred Income Tax ("EADIT").

Petitioner's witness Paul Lewellyn described his professional background and his role as Vice President of Petitioner. He confirmed his familiarity with Petitioner's books and records, the customers Boonville serves and Petitioner's utility plant. He opined that Petitioner's utility plant is used and useful in providing natural gas service to its customers. He explained that if Petitioner were to reproduce such utility plant, the cost of reproduction would be significantly higher than the original cost reflected in witness Mann's Exhibit BJM-1. Mr. Lewellyn also addressed the allocation of the revenue requirement proposed by Petitioner's witness Heid and that he had offered guidance on recovering more fixed costs through the monthly customer charge. He noted that he and the other officers of Boonville ultimately agreed with the monthly customer charges proposed by witness Heid.

Petitioner's witness Ridlen offered testimony to address Petitioner's cost of equity capital and issues related to EADIT flowing from his understanding of the Commission's Order in Cause No.45032 S6. With respect to the cost of equity capital, Mr. Ridlen suggested a rate of return of at least 10.25%. He also acknowledged that Petitioner has compromised on the issue of return on equity at 10.10% through a Partial Settlement with the OUCC. Turning to the Commission's Order in Cause No. 45032 S6, he explained his understanding of that Order and concluded Petitioner was to address any refund of EADIT in this base rate case. He described his analysis of Petitioner's utility plant in service and what portion of that plant was included in current rates. He discussed the Commission's Order in Cause No. 45032 S6 related to customers added since Petitioner's last base rate case; indicating Petitioner had added 261 customers. He also provided the amount those customers may have contributed in federal income taxes referencing the difference between the 34% tax rate and the new 21% tax rate. Mr. Ridlen concluded with his opinion on the amount of additional EADIT that Petitioner may be required to refund beyond that proposed in Cause No. 45032 S6.

The testimony and exhibits of Petitioner's witness Heid described the cost of service study ("COSS") he performed and his derivation of Petitioner's rates and charges for each rate schedule

³ While Ms. Mann's direct testimony at page 10, line 3 states the increase is \$365,915, this is an error in the testimony. The proper figure is reflected in Exhibit C, which is \$356,915.

which were designed to generate the revenue requirement sought by the Petitioner. Mr. Heid's exhibits reflect the results of his COSS and revenue allocation (Exhibit KAH-2), the rate of return on rate base by customer class (Exhibit KAH-3), the subsidy flowing between rate classes (Exhibit KAH-4), the reduction in subsidy levels through his proposed revenue requirement distribution (Exhibit KAH-5), and the proposed rates and charges (Exhibit KAH-6). Mr. Heid points out that even with the increase in monthly customer charges, Petitioner's customers are not covering the fixed costs. Mr. Heid also offered a revised tariff for this Petitioner and described why the Interruptible Transportation Service rate should be removed from the tariff.

b. OUCC's Direct Case-in-Chief. Heather R. Poole, Assistant Director of the Natural Gas Division of the OUCC, adopting the prefiled testimony of OUCC witness Ahmed, provided testimony summarizing Boonville's overall request for a rate increase, and sponsored accounting schedules supporting the pro forma operating revenue and expense adjustments, rate base and capital structure as proposed by various OUCC witnesses. Ms. Poole introduced the other OUCC witnesses filing testimony in this case, and gave a brief description of each witness' testimony. Ms. Poole also explained the attachments and schedules that make up her revenue requirements. Ms. Poole objected to Boonville's IURC fee calculation for the estimated volume of gas purchased, removal of bad debt, and proposed use of an updated IURC rate as of July 1, 2019. Ms. Poole recommended an IURC fee adjustment of \$339. Ms. Poole did not dispute the methodology Boonville used to calculate the Indiana Utility Receipts Tax, or federal and state income taxes, but proposed different amounts due to changes to pro forma revenue and expense adjustments made by the OUCC. Ms. Poole recommended an overall revenue increase of \$63,258, and a non-gas cost revenue increase percentage of 2.46%. Ms. Poole stated the revenue increase is calculated using an original cost rate base of \$5,836,659, a weighted average cost of capital of 6.89%, and return on original cost rate base of \$402,148.

OUCC Utility Analyst Amy Larsen testified on elimination of GCA revenue, revenue from the compliance filing in Cause No. 44129, revenue related to the new National Oceanic and Atmospheric Administration ("NOAA") Average for the Normal Temperature Adjustment ("NTA"), natural gas purchased, EADIT, employer sponsored employee gatherings, and the capital structure. Ms. Larsen testified Petitioner did not use the updated November 2017 sales report which resulted in three adjustments to revenue, and an adjustment to natural gas purchased. Ms. Larsen disagreed with Petitioner's elimination of GCA revenue adjustment due to the November 2017 sales number. Ms. Larsen recommended an adjustment to the elimination of GCA revenue of (\$1,860,844). Ms. Larsen disagreed with Petitioner's adjustment of operating revenue from the compliance filing in Cause No. 44129 due to the updated November 2017 sales number. Ms. Larsen recommended an adjustment to revenue from the compliance filing of (\$13,906). Ms. Larsen disagreed with Petitioner's NOAA Average for the NTA adjustment due to the updated November 2017 sales number. Ms. Larsen recommended an adjustment of (\$25,512). Ms. Larsen also disagreed with Petitioner's natural gas purchased adjustment. Ms. Larsen testified she disagreed with the November 2017 sales number as well as Petitioner's Unaccounted for Gas ("UAFG") percentage. Ms. Larsen stated she disagreed with Petitioner's calculation using a two-year average and proposed using a three-year average for UAFG. Ms. Larsen recommended a natural gas purchased adjustment of (\$1,854,470). Ms. Larsen disagreed with Petitioner's EADIT adjustment. Ms. Larsen testified Petitioner did not comply with the Commission's Order in Cause No. 45032. Ms. Larsen stated for customers to achieve the full refund contemplated in the

Commission's Final Order in Cause No. 45032 S6, Petitioner's base rates in this Cause must include a total EADIT refund as of December 31, 2017 in the amount of \$729,280. Ms. Larsen testified Petitioner should have made an expense adjustment instead of a revenue adjustment to account for the refund due to the Tax Cuts and Jobs Act ("TCJA"). Ms. Larsen stated Petitioner has accumulated additional deferred taxes since its last rate case in Cause No. 44129, and due to the TCJA, which reduced Petitioner's corporate federal income tax rate to 21%, Boonville now has an excess deferred tax balance generated from customers, which must be repaid. Based on a total EADIT balance as of December 31, 2017 of \$729,280 amortized over 14.59 years, Ms. Larsen recommended an expense adjustment for the amortization of EADIT of (\$49,985). Ms. Larsen also testified on Petitioner's capital structure. Ms. Larsen testified Petitioner's EADIT refund should be included in Petitioner's capital structure at zero cost in the amount of \$729,280.

OUCC Utility Analyst Isabelle Gordon recommended adjustments to rate case expense, health insurance, leased employees, the amortization of tax investigation costs, and property tax. Ms. Gordon addressed Petitioner's rate case expense adjustment, noting a lack of detail on one invoice and reduced Petitioner's rate case expense by \$1,500. Ms. Gordon performed an analysis of Petitioner's average number of years between rate cases, and recommended a rate case amortization period of six years. She also recommended Petitioner file a revised tariff if new rates have not gone into effect by the end of the six-year period to remove rate case expense from Petitioner's base rates. Her adjustments result in a pro forma rate case expense of \$38,596. Ms. Gordon testified Petitioner's pro forma health insurance expense did not account for increases in health insurance expense which were fixed, known, and measurable within twelve months of the end of the test year. Ms. Gordon's pro forma health insurance expense adjustment is \$16,429. Ms. Gordon also addressed Petitioner's leased employee adjustment. Ms. Gordon stated Petitioner hired a leased employee as a full-time employee accounted for in Petitioner's payroll expense. But another adjustment for leased employee expense was a \$10,400 increase. Ms. Gordon disagreed with Petitioner's TCJA cost adjustment because certain invoices associated with the adjustment lacked sufficient detail. Ms. Gordon removed \$7,299 from Petitioner's total costs as of December 31, 2018 of \$49,868 to arrive at a pro forma TCJA amount of \$42,569. Ms. Gordon also recommended Petitioner file a revised tariff if new rates have not gone into effect at the end of the six-year period to remove TCJA costs from Petitioner's base rates. Ms. Gordon stated Petitioner used net utility plant for property taxes at June 30, 2018 in its calculation, however, property values are assessed as of December 31 each year. She used Petitioner's trial balance as of December 31, 2018 to calculate net utility plant.

OUCC Utility Analyst Leon Golden testified about his analysis of Boonville's proposed rate base calculations and its adjustment to depreciation expense. He proposed adjustments to both based on the results of his analysis. Mr. Golden testified Boonville did not propose changes in its depreciation rates from those previously accepted by the Commission in Cause No. 44129. In reviewing Boonville's proposed adjustment to depreciation expense, Mr. Golden made an adjustment based on Petitioner's calculation for fully depreciated items being subtracted from the total deductions. Mr. Golden also calculated a different amount for fully depreciated assets. He calculated a total fully depreciated amount of \$1,879,189 for distribution plant, \$851,587 for transportation, computer and communication equipment, and \$732,355 for all other general plant. He testified these changes result in an adjustment to depreciation expense of \$57,796. In regards to rate base, Mr. Golden agreed with Boonville's proposed additions for Total Utility Plant in

Service, but calculated different amounts for accumulated depreciation and working capital. Mr. Golden calculated his accumulated depreciation adjustment using the same methodology as Petitioner, but used his depreciation expense amount to calculate additional accumulated depreciation between June and September. Mr. Golden agreed with the methodology used to calculate working capital, but adjusted his calculation based on adjustments made by other OUCC witnesses for operation and maintenance expenses. Mr. Golden also calculated a different amount for materials and supplies based on updated information after the rate base cut-off date. Taking into account all of the adjustments made in Mr. Golden's analysis, he proposed an adjusted original cost rate base amount of \$5,836,659.

Heather R. Poole, Assistant Director of the Natural Gas Division of the OUCC, provided separate testimony summarizing the background of Boonville's Energy Efficiency Program ("EE Program") approved in the Commission's Final Order in Cause No. 43995. Ms. Poole testified Boonville, along with seven other small utilities (collectively the "Joint Petitioners"), petitioned the Commission in February 2011 in Cause No. 43995 seeking approval of an alternative regulatory plan authorizing each of the Joint Petitioners to implement an energy efficiency program with accompanying funding and decoupling mechanisms. She indicated that she had reviewed the calculation of the Sales Reconciliation Component ("SRC") provided by the Petitioner's representatives. She proposed that Petitioner should refund \$305,686 relative to the SRC to its ratepayers over a six-year period. She notes that this six-year refund period is designed to match the rate case expense amortization which has been proposed by the OUCC in this rate case. Witness Poole also addressed the Energy Efficiency Funding Component ("EEFC"). She described that Petitioner has collected EEFC funding through its charge of \$0.83 per month to each of its residential customers. She noted that Petitioner has incurred administrative costs associated with the Energy Efficiency Funding Program, but suggests that such costs be considered only through the test year of June 30, 2018. Based on her cutoff for administrative costs, she recommended that Petitioner refund its ratepayers \$16,414 of EEFC dollars over a six-year period. Witness Poole also addressed Petitioner's proposal to eliminate its Appendix F in its tariff. She recommends that Appendix F be maintained in Petitioner's tariff until such time as the SRC and EEFC funds required to be refunded have in fact been refunded to Petitioner's ratepayers. She recommends that prior to removing Appendix F, the Petitioner file a report reflecting the amount of SRC and EEFC dollars to be refunded, and the amount actually refunded. In addition to her recommendations on refunds, Witness Poole indicates that the SRC dollars, and EEFC dollars net of administrative costs, should be included in Petitioner's capital structure at a zero cost.

Mr. Leja D. Courter, Director of the Natural Gas Division, recommended approval of the Partial Settlement entered into by the Parties. The Partial Settlement is limited to the issue of setting Boonville's cost of common equity ("cost of equity" or "ROE"). The Parties agreed on an ROE of 10.10% for Boonville in this Cause. Mr. Courter testified he would have recommended an ROE below 10.10% in litigation, but recognized that litigation carries risk, and ratepayers benefit from keeping litigation costs low. Settling ROE avoids the cost to litigate this issue, which is traditionally a contentious topic. He testified the 10.10% ROE agreed to in the Partial Settlement is a reasonable compromise between the likely litigation positions of the Parties. Therefore, Mr. Courter recommended the Commission approve the Partial Settlement, and the agreed 10.10% ROE therein for use in Petitioner's capital structure in this Cause.

Brien R. Krieger, Utility Analyst at the OUCC, discussed his review and analysis of Boonville's COSS, proposed rate design, and monthly customer charges. He stated Petitioner's Rate RS has approximately 4,900 residential customers, which represents 92% of the customer count and approximately 60% of the annual natural gas throughput. He also stated Petitioner's commercial customers are a mix of different customers. He testified Petitioner has one large industrial customer. Mr. Krieger analyzed Petitioner's witness Heid's COSS and validated the COSS method as consistent with FERC accounts and appropriate for Petitioner's rate base and customer classifications. Mr. Krieger stated the allocation of rate base, operations & maintenance, and taxes was appropriately supported by Petitioner's COSS and the customer rate class characteristics. He recommended the Commission accept Petitioner's COSS for determining Boonville's rate class revenue requirements. Mr. Krieger summarized his analysis of Petitioner's rate design as moving all rate classes closer to their actual cost for service and reducing the subsidy dollars exchanged. Mr. Krieger did not dispute Petitioner's proposed customer charges for Rate CS and Rate ATS, however Mr. Krieger provided excerpts from the American Gas Association's May 28, 2015 Energy Analysis titled *Natural Gas Utility Rate Structure: The Customer Charge Component – 2015 Update* and recommended the residential customer charge be set at the lower of \$14.00 as proposed by Boonville, or an increase equal to the percent by which the Commission increases Boonville's total margin.

c. **Petitioner's Rebuttal Case.** Petitioner's rebuttal consists of the testimony of its witnesses Mann, Ridlen, and Heid. Ms. Mann explained that the OUCC had accepted Petitioner's accounting adjustments related to: revenue changes from Phase I of Cause No. 45032, change in revenue from a changed reconnect/disconnect fee, payroll changes, pension flow through, FICA taxes, property taxes except for charges associated with a new property tax rate and OUCC proposed changes to utility plant, bad debt calculations, charitable contributions, NTA related energy funds, and the amortization of contributions in aid of construction. She noted the acceptance of Petitioner's methodology on various other adjustments, though the OUCC proposed different results.

Ms. Mann also addressed various OUCC adjustments. She disagreed with the OUCC's calculation of the IURC fee, but accepted that the IURC fee rate, now known for 2019-2020, should be used. She explained Petitioner was willing to accept the OUCC's updates and changes to GCA revenue, NOAA weather adjustments, and natural gas purchased. She explained that Petitioner would accept adjustments to: expenses related to employee gatherings, health insurance, leased employees, a further adjustment on property tax, utility plant in service, depreciation expense, material and supplies, recognition that the methodology for calculating working capital is the same; and a different total rate base. Ms. Mann then explained her disagreement with the OUCC's adjustments on rate case expense, TCJA expense, SRC refund, EEFC refund, and maintaining Appendix F.

Witness Ridlen explained his disagreement with the OUCC's position on EADIT, SRC, and EEFC. He indicated that the amount of EADIT refund should be that originally proposed by Petitioner in Cause No. 45032 S6 plus the amount referenced in his direct testimony associated with new customers. On the SRC, Mr. Ridlen proposed that no refund of dollars was necessary. Finally, he opined that none of the EADIT, SRC, or EEFC dollars represent capital for this Petitioner.

Witness Heid addressed the OUC's position on the SRC and outlined his disagreement on the OUC's proposed refund. He also disagreed with the OUC on the SRC providing capital to the Petitioner. With respect to the position of the OUC on the monthly customer charges for residential customers, he points to the Commission encouraging utilities to move towards straight-fixed-variable rates which in part leads to the need to increase all monthly customer charges. He responded to the OUC's testimony on the American Gas Association 2015 Energy Analysis and concluded that such analysis supports Petitioner's proposal. Finally, he explained that Petitioner's proposed monthly customer charge to the residential customer class will only recover 35% of what he believes are the fixed costs of serving that class.

d. Settlement Agreement and Settlement Testimony. The Parties' Settlement Agreement indicates all issues have been settled either through prefiled testimony or the compromises outlined in the Settlement Agreement. Petitioner's Vice President Paul Lewellyn testified he reviewed the Settlement Agreement, described his understanding of the Settlement Agreement, and recommended the Commission approve the Settlement Agreement.

Petitioner's witness Ridlen described that the Parties had agreed to remove EADIT, SRC, and EEFC from the capital structure along with agreeing to meet for purposes of further discussion on the SRC, EEFC, and concluding the Energy Efficiency Program. Mr. Ridlen provided accounting schedules, Settlement Exhibit ELR-1S, which reflects the numerical results of the Settlement Agreement.

OUC witness Poole provided settlement testimony supporting the Settlement Agreement and recommending its approval by the Commission. For rate base purposes, Ms. Poole stated the Settling Parties agreed Boonville's total rate base as of the cutoff date is \$5,837,802. Relating to the capital structure, Ms. Poole stated the Settling Parties agree Boonville's capital structure as of September 30, 2018 should be comprised of: common equity of \$6,745,715, customer deposits of \$355,139, and deferred taxes of \$1,810,325, for a total of \$8,911,179, resulting in a weighted average cost of capital of 7.89%. For purposes of Petitioner's revenue requirement, she indicates the Parties agree the Petitioner should increase its current rates sufficient to produce an additional \$134,712, exclusive of the cost of gas.

Ms. Poole also testified the Settling Parties agree to move the SRC and EEFC refund issue out of the current rate case and attempt to resolve such issues with all Joint Petitioners in Cause No. 43995. She stated the Settling Parties agree all discussions should be completed by November 27, 2019 and if no resolution has been reached, either party may seek creation of a sub-docket in Cause No. 43995. Ms. Poole testified the Settling Parties agree neither the SRC nor the EEFC should be included in the capital structure in this case, but other issues regarding the SRC or EEFC will be handled in the negotiations or in the Cause No. 43995 sub-docket. Ms. Poole stated the Settling Parties have agreed Appendix F should remain in place in Boonville's tariffs until the SRC, EEFC and administrative costs associated with the Energy Efficiency Program have been resolved.

5. Commission Discussion and Findings. 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 (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 (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. 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, Inc.*, 735 N.E.2d at 795. The Commission’s own procedural rules require settlements be supported by probative evidence. Therefore, before the Commission can approve the Settlement, we must determine whether the evidence in this cause sufficiently supports the conclusions; and that the Settlement is reasonable, just, and consistent with the purpose of Ind. Code 8-1-2-1. We must also consider whether such settlement serves the public interest.

The Parties’ Partial Settlement and the subsequent Settlement Agreement reflects the Parties effectively resolved most issues through their respective testimony including the return on equity; adjustments to test year revenue relating to tariff adjustments required by Phase I of Cause No. 45032 and Cause No. 44129, GCA revenue, NTA revenue, and to reflect recent changes to reconnect/disconnect fees; expense adjustments to natural gas purchased, payroll, pension, bad debt, charitable contributions, miscellaneous expenses associated with employee gatherings, NTA related energy efficiency funds, property and casualty insurance, health insurance, leased employees and a replacement employee, depreciation, and the methodology on various flow through adjustments; utility plant, accumulated depreciation, materials and supplies, and the methodology of calculating working capital for rate base. What was not resolved through the prefiled testimony issues related to: EADIT revenue and expense adjustments, rate case expense, TCJA expense, amortization period for rate case expense and TCJA expense, SRC, EEFC, final property tax amounts, capital structure amounts, and the appropriate monthly customer charge for residential customers.

The Settlement Agreement and the Parties’ Settlement Testimony resolves all of the remaining issues with respect to EADIT. The Parties now agree to the OUCC’s position that \$729,280 of EADIT dollars should be refunded to Petitioner’s ratepayers over 14.59 years through a downward adjustment to federal income tax of \$49,985, as reflected on Settlement Exhibit ELR-1S. The Parties also agreed there is no remaining EADIT amount of \$185,324 to be added back to Petitioner’s capital structure as additional deferred taxes. Finally, the Parties agree the EADIT refund should not be included in the capital structure.

With respect to rate case expense and TCJA expense proposed adjustments by the OUCC based on lack of detail in certain invoices, the Parties now agree Petitioner’s estimated rate case expense should be recovered, but Petitioner’s proposed TCJA expense should be reduced by \$7,299. Such expenses should be recovered through an amortization of five years. Both the amounts and the amortized period are reflected in Settlement Exhibit ELR-1S. The Parties also agree Petitioner’s tariff, permitting the recovery of rate case expense and TCJA expense, should be changed in the future to remove such recovery if Petitioner has not filed a new rate case within five years.

With respect to property tax, the Parties recognized that each has proposed different amounts of property tax. The Parties now believe Petitioner's adjusted test year property tax is \$81,202, requiring a downward adjustment of \$1,347. This reduction is reflected on the Settlement Exhibit ELR-1S.

The Parties acknowledge they are now in agreement on all monthly customer charges. The new monthly customer charges shall be those proposed by Petitioner in its direct case.

Based on the evidence of record, we find the compromises on accounting adjustments, and the monthly customer charges are reasonable, supported by the evidence of record, and are in the public interest.

Turning to the issues related to SRC, EEFC, and Appendix F, the Settlement Agreement indicates the Parties believe it would be appropriate that they be permitted time to meet and discuss ways to conclude the Energy Efficiency Program and the issues remaining with the SRC, EEFC, and administrative costs associated with the Energy Efficiency Program not resolved here. In that regard, the Parties have indicated they would meet and discuss these issues through November 27, 2019. However, if such discussions do not end in a settlement, either Party may ask this Commission to create a sub docket in Cause No. 43995 for purposes of litigating the issues related to: the amounts associated with the SRC and EEFC, and what amount of administrative costs associated with the Energy Efficiency Program should be recoverable from ratepayers. The Parties have also indicated the request for further discussions will, to the extent possible include the other Joint Petitioners of Cause No. 43995, even though those Joint Petitioners are not Parties to this Cause. We believe this approach is reasonable and in the public interest. We come to such a conclusion recognizing these Parties, among others, initially worked collaboratively in order to establish an Energy Efficiency Program that would be beneficial to this Petitioner, and its customers. We believe it is reasonable that the Parties continue with such collaborative efforts for purposes of seeking a fair and reasonable means of concluding the Energy Efficiency Program, which includes the SRC and EEFC. We also agree that it is reasonable to establish a time period for such discussions. Therefore, in keeping with the Settlement Agreement, we acknowledge either Party in this proceeding may petition this Commission seeking a sub docket in Cause No. 43995 for purposes of litigating the issues associated with the Energy Efficiency Program, SRC, EEFC, and administrative costs that have not already been resolved by the Settlement Agreement. The Settlement Agreement also recognizes Appendix F should remain in place until the SRC and EEFC issues have been resolved. We agree.

The Parties' Settlement Agreement proposes that rate case expense and TCJA expense included in Petitioner's revenue requirement be amortized over five years. The Parties also agree the Petitioner will file a new tariff removing the amortization of rate case expense and TCJA expense at the end of such five years, unless Petitioner has filed a new base rate case. We believe such amortization period and the future potential changes to Petitioner's tariff are reasonable and supported by the evidence of this Cause.

Based on our review of the evidence of record as described above, we believe the Parties' Settlement Agreement is a reasonable compromise. Further, we believe the results of the Settlement Agreement should be used solely for purposes of authorizing an increase to Petitioner's

rates and establishing a mechanism for further discussions on the Energy Efficiency Program that have not been resolved here. Finally, we recognize this Settlement Agreement represents a compromise between these Parties. As such, this Settlement Agreement should not be used as precedent in any other proceeding, consistent with our decision in *Richmond Power & Light Cause* No. 40434, March 19, 1997.

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

1. The Partial Settlement and Settlement Agreement are approved and incorporated by reference in this Order.
2. Petitioner shall be authorized to increase its operating revenues exclusive of the cost of gas by \$134,712; and authorized a net operating income of \$460,604 on a rate base of \$5,837,802.
3. Within 20 days of this Order, Petitioner shall make a compliance tariff filing in keeping with our findings above.
4. This Order shall be effective on and after the date of its approval.

HUSTON, KREYDA, AND ZIEGNER CONCUR; FREEMAN AND OBER ABSENT:

APPROVED: OCT 29 2019

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

Virginia Lucay Acting for Mary Becerra
Mary M. Becerra
Secretary of the Commission