

ORIGINAL

Commissioner	Yes	No	Not Participating
Huston	✓		
Freeman	✓		
Krevda	✓		
Ober	✓		
Ziegner	✓		

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF AQUA)
 INDIANA, INC.'S DARLINGTON WATER) CAUSE NO. 45314 U
 DIVISION FOR A NEW SCHEDULE OF RATES)
 AND CHARGES.) APPROVED: MAY 27 2020

ORDER OF THE COMMISSION

Presiding Officers:
Sarah E. Freeman, Commissioner
Loraine L. Seyfried, Chief Administrative Law Judge

On November 1, 2019, Aqua Indiana, Inc. (“Applicant” or “Aqua”) filed a Small Utility Rate Application (“Application”) under Ind. Code § 8-1-2-61.5 and 170 IAC 14-1 for its Darlington Water Division (“Darlington”).

On November 20, 2019, the Water and Wastewater Division of the Indiana Utility Regulatory Commission (“Commission”) issued a Memorandum finding that the Application was incomplete because Aqua failed to file its proof of publication as required by 170 IAC 14-1-2(b)(1). On November 21, 2019, Aqua filed its proof of publication. On November 22, 2019, the Water and Wastewater Division issued a Memorandum finding the Application to be complete.

In rate cases filed under Ind. Code § 8-1-2-61.5, a formal public hearing is not required unless a hearing is requested by at least ten customers, a public or municipal corporation, or by the Indiana Office of Utility Consumer Counselor (“OUCC”). Although no request for a formal public hearing was received, the OUCC filed a Notice of Request for Public Field Hearing on December 19, 2019. In accordance with a January 3, 2020 Docket Entry, a public field hearing was held on February 18, 2020 at 6:00 p.m. at the Darlington Community Center, 105 Franklin Street, Darlington, Indiana.

On February 20, 2020, as required by 170 IAC 14-1-4(a), the OUCC filed its report making certain recommendations. Aqua filed its response to the OUCC’s report on February 26, 2020. On April 28, 2020, the OUCC filed a Notice of Settlement Agreement, which included a Joint Stipulation and Settlement Agreement (“Settlement Agreement”) that had been entered into by Aqua and the OUCC resolving all issues presented in this Cause.

Based on applicable law and the evidence presented, the Commission finds as follows:

1. Commission Jurisdiction and Notice. Applicant is a public utility as defined in Ind. Code § 8-1-2-1(a) and qualifies for treatment as a small utility under Ind. Code § 8-1-2-61.5 for approval of water rates. Applicant published legal notice of the filing of this small utility rate case as required by 170 IAC 14-1-2(b). Therefore, we find that notice of this Cause was given and published as required by law. Further, the Commission finds that the Application satisfies the

requirements of Ind. Code § 8-1-2-61.5 and 170 IAC 14-1. Accordingly, the Commission has jurisdiction over Aqua and the subject matter of this proceeding.

2. **Applicant's Characteristics.** Aqua Indiana, Inc. is a for-profit corporation that provides water utility service to approximately 1,200 customers in Indiana. Aqua also provides wastewater utility service to approximately 23,000 customers in Indiana. The Darlington Water Division is a division of Aqua Indiana, Inc., providing water utility service to approximately 297 customers in and around the Town of Darlington in Montgomery County, Indiana. Darlington's system consists of wells, five miles of water distribution mains, and a 100,000 gallon storage tank.

3. **Test Period.** The test period selected for determining Darlington's revenues and expenses reasonably incurred in providing water utility service to its customers includes the 12 months ending September 30, 2019, with adjustments for changes that are fixed, known, and measurable. The Commission finds this test period is sufficiently representative of Darlington's normal operations to provide reliable data for ratemaking purposes.

4. **Background and Relief Requested.** Darlington's current rates and charges were approved in the Commission's June 10, 2009 Order in Cause No. 43609 U. In its Application, Aqua requested authority to increase Darlington's rates across-the-board by 23.2% to generate an additional \$48,381 in annual revenue.

5. **OUCC Report.** The OUCC's report was prepared by Carla F. Sullivan, a Utility Analyst II in the Water/Wastewater Division, and Kristen Willoughby, a Utility Analyst in the Water/Wastewater Division. In its report, the OUCC presented its analysis of Aqua's Application and ultimately recommended approval of Aqua's requested rate increase for Darlington. The OUCC also noted that Aqua's rate design for Darlington is based on an unusually high minimum water consumption of 6,000 gallons and recommended Aqua evaluate basing Darlington's minimum charge on a lower minimum consumption.

6. **Applicant's Response to the OUCC Report.** Aqua agreed with the OUCC's recommendation to evaluate Darlington's rate design, but requested that: (1) it have the ability to propose a rate design with a different basis than what was proposed by the OUCC; (2) the Commission allow future recovery of its costs via a regulatory asset; and (3) it have the ability to recover any revenue shortfall after one year under the revised rate structure.

7. **Comments from the Public Field Hearing.** At the public field hearing, a few speakers expressed concern with the amount of the increase being sought and the base water charge, which uses a minimum water consumption amount of 6,000 gallons. While another speaker expressed appreciation for the increase in water pressure since Aqua's last rate case for Darlington, he also voiced concern with water leaks and corresponding street repairs. Concern was also expressed about the new fire hydrants and the rates charged to the volunteer fire department.

8. **Settlement Agreement.** The Settlement Agreement sets forth the parties' agreement that Aqua should be authorized to increase Darlington's monthly recurring rates and charges by 23.2% for an annual revenue increase of \$48,381. The parties also agree that the determination of rate base should include the unamortized acquisition adjustment approved in

Aqua Indiana, Inc., Cause No. 43087 (IURC Oct. 11, 2006) as well as an offset for accumulated deferred income taxes, which results in a rate base of \$1,431,946 as of September 30, 2019. The parties further agreed that an overall rate of return on rate base of 6.87% will adequately and fairly compensate Aqua for its investments while maintaining the financial viability of its water division.

Regarding the disputed issue of rate design, the Settlement Agreement provides that within 90 days of this Order, Aqua will complete the minimum use analysis recommended by the OUCC comparing the effect on Darlington's customers' rates of minimum usage charges based on minimum consumption of 6,000, 5,000, 4,000, and 3,000 gallons per month. Thereafter, if the OUCC and Aqua reach a consensus on a proposed rate design, Aqua, through a 30-day filing under 170 IAC 1-6, will request Commission approval of the new minimum usage amount. If the parties are unable to reach a consensus, Aqua and the OUCC will advise the Commission of that fact, and the rate design based on the current 6,000 gallon minimum usage charge shall continue through the next rate case wherein Aqua will present rate design information for consideration of a lower minimum consumption. The parties further agreed Aqua may defer any actual costs, up to \$2,000, of preparing the alternative rate structures, and treat such costs as a regulatory asset and defer amortization until Applicant's next general rate case order for Darlington after which the cost may be recovered.

The Settlement Agreement provides that although any change in rate design should be revenue neutral, Aqua believes lowering the minimum usage could result in a decrease in revenues. Consequently, in the event a new rate design is approved and Darlington experiences a revenue shortfall in any of the first four 12-month periods of operation under the approved new rate design, the parties agree that Aqua should be permitted to record a regulatory asset and implement recovery of the regulatory asset in Darlington's next rate case. The Settlement Agreement provides that the first 12-month period will begin with the first full billing month under the new rate design and recovery would be limited to a return of, and not a return on, the qualified regulatory asset.

The Settlement Agreement indicates that the only purpose of this revenue recovery mechanism is to protect Aqua from changes in customer consumption caused by the new rate design resulting in under-collection of Darlington's authorized revenues. Therefore, the parties agreed that the regulatory asset shall be no more than the lower of: (1) the revenue shortfall, or (2) the "cumulative decrease in total minimum charges billed" under the new rate design, which cumulative shall be known and established when the parties agree on a new lower minimum charge. In addition, Aqua will not employ this mechanism if: (1) between the end of the test year and the end of regulatory asset accumulation period, Darlington's customer count has decreased by more than 4%, or (2) Darlington's decrease in billings is found by the Commission in the next rate case to have been substantially due to reasons other than the change in rate design. Finally, the parties further agree the creation of a regulatory asset shall depend on the net effect of billings for all four 12-month periods. Therefore, if Darlington records revenue shortfalls for one or more 12-month period but has had a revenue surplus in any of the other 12-month periods, Darlington may recover a regulatory asset only if and to the extent the shortfalls in the applicable 12-month periods exceed the revenue surplus in the other 12-month periods.

Regarding recovery of the regulatory asset, the parties agree the issue will be addressed in Aqua's next rate case for Darlington. However, Aqua agreed it would be recovered over the

reasonably expected life of Darlington’s rates established in the next rate case or four years, whichever is greater. Aqua may also extend recovery of the regulatory asset beyond the expected life of future rates to avoid rate shock. In addition, any charge or revenue requirement to recover the regulatory asset will be eliminated upon full recovery of the regulatory asset and rates reduced accordingly.

Finally, the Settlement Agreement provides that Aqua will continue to employ cost-effective solutions to reduce Darlington’s water loss.

9. Commission Discussion and Findings. Settlements presented to the Commission are not ordinary contracts between private parties. *U.S. Gypsum, Inc. v. Ind. Gas Co.*, 735 N.E.2d 790, 803 (Ind. 2000). When the Commission approves a settlement, that settlement “loses its status as a strictly private contract and takes on a public interest gloss.” *Id.* (quoting *Citizens Action Coal. of Ind., Inc. v. PSI Energy, Inc.*, 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 Coal.*, 664 N.E.2d at 406.

Further, 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 Coal. of Ind., Inc. v. Pub. Serv. Co. of Ind., Inc.*, 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 Ind. Code ch. 8-1-2, and that such agreement serves the public interest.

The Settlement Agreement essentially confirms the parties’ original positions that Aqua’s request for approval of a 23.2% increase in Darlington’s rates and charges for an annual revenue increase of \$48,381 is reasonable and should be approved. Based on the evidence presented, we find the parties’ agreement regarding Aqua’s requested rate increase to be reasonable, in the public interest, and should be approved. Accordingly, we find that Aqua is authorized to increase Darlington’s rates and charges as set forth below:

	<u>Settlement</u>
Original Cost Rate Base	\$ 1,431,946
Times: Weighted Cost of Capital	<u>6.87%</u>
Net Operating Income Required	98,349
Less: Pro-forma Net Operating Income at Present Rates	<u>63,351</u>
Increase in Net Operating Income Required	34,998
Multiply By: Gross Revenue Conversion Factor	<u>138.2381%</u>
Revenue Increase Required	<u>\$ 48,381</u>
Recommended Percentage Increase	<u>23.2%</u>

Operating Revenues	\$ 263,522
Operating Expenses	89,776
Depr. and Amort. Expense	33,640
Taxes Other Than Income	17,935
Income Taxes	23,821
<i>Net Operating Income</i>	<u>\$ 98,349</u>

The Settlement Agreement also resolves the parties' issues and concerns with Aqua's current rate design for Darlington, which is based on a minimum water consumption of 6,000 gallons. As noted by the OUCC in its Report, the minimum usage of 6,000 gallons is a legacy rate design that predated Applicant's ownership of the Darlington system. In Aqua's last base rate case for Darlington, Aqua proposed to reduce the minimum usage to 3,000 gallons to more accurately reflect a customer's actual usage and promote more efficient water use. *Aqua Ind., Inc. Darlington Water Div.*, Cause No. 43609 at 2-3 (IURC June 10, 2009). However, many customers opposed combining a significant rate increase with a decrease in the amount of water that came with a minimum charge. Hence, the OUCC and Aqua agreed that a change to the minimum usage should not occur.

In this case, however, several customers at the public field hearing expressed a desire for Applicant to lower the minimum usage. The OUCC, in its Report, noted Aqua's minimum usage for Darlington was unusually high and recommended Aqua evaluate using a lower minimum usage. While Aqua did not dispute that 6,000 gallons was an unusually high minimum usage, it did express concern with evaluating and implementing an alternative rate design. The parties, through the Settlement Agreement, have reached agreement on a process that will allow Aqua to further evaluate and modify Darlington's rate design after the conclusion of this case.

The evidence provided supports the public interest of considering a rate structure that will more accurately reflect actual customer usage and promote more efficient water use. The mechanism created by the parties in their Settlement Agreement permits the issue to be explored without requiring the parties to wait until the next rate case to address the issue or requiring Applicant to defer Darlington's rate increase. In addition, by proposing any agreed redesign of rates be accomplished and implemented through the Commission's 30-Day Administrative Filing Procedures and Guidelines, the Commission retains the ability to determine whether a new rate design should be approved, notwithstanding any agreement of the OUCC and Applicant. We also understand Aqua's desire for some safeguard against a change in consumption habits caused by the decrease in allowed consumption tied to the minimum charge. Therefore, we find the Settlement Agreement provides a reasonable mechanism to address the concerns and goals expressed by both parties and to be in the public interest, and we approve it.

Finally, 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, 1997 WL 34880849 at *7-8 (IURC March 19, 1997).

- 10. Effect on Rates.** A residential customer using 6,000 gallons per month would

experience an increase of \$10.80 per month from \$46.69 to \$57.49.

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

1. The Joint Stipulation and Settlement Agreement, a copy of which is attached to this Order, is approved.

2. Applicant is authorized to increase Darlington's monthly recurring rates and charges by 23.2% for an annual revenue increase of \$48,381.

3. Prior to implementing the rates authorized in this Order, Applicant shall file new rate schedules under this Cause for approval by the Commission's Water and Wastewater Division ("Division"). Such rates shall be effective on or after the Order date subject to Division review and agreement with the amounts reflected.

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

HUSTON, FREEMAN, KREVDA, OBER, AND ZIEGNER CONCUR:

APPROVED: MAY 27 2020

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



Mary M. Becerra
Secretary of the Commission

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE APPLICATION OF AQUA)
INDIANA INC.'S DARLINGTON WATER DIVISION FOR) CAUSE NO. 45314-U
A NEW SCHEDULE OF RATES AND CHARGES)

JOINT STIPULATION AND SETTLEMENT AGREEMENT

On November 1, 2019, Aqua Indiana, Inc., (“Applicant”) filed its Small Utility Rate Filing requesting authority to increase the recurring monthly rates and charges its Darlington Water Division collects for water services provided to the public. Applicant proposed an across-the-board increase of approximately 23.2% in the recurring monthly rates and charges of its Darlington Water Division in order to produce an increase in operating revenues of \$48,381.

The Indiana Office of Utility Consumer Counselor (“OUCC”) reviewed the Applicant’s filing, met with representatives of Applicant and requested additional information from Applicant through both formal and informal discovery. Subsequent to the filing of the OUCC’s Report and Applicant’s Response, Applicant and the OUCC engaged in settlement discussions. As a result of those discussions, Applicant and the OUCC reached a consensus with respect to all of the following:

1. **Test Year.** The period used for determining the revenues and expenses incurred by Applicant’s Darlington Water Division to provide water service to the public was the twelve months ended September 30, 2019. With revenue and expense adjustments for changes that were fixed, known and measurable for ratemaking purposes and occurring through September 30, 2020 this test year is sufficiently representative of the normal

operations of Applicant's Darlington Water Division to provide reliable information for ratemaking purposes.

2. **Rate Base.** The utility properties used and useful for the provision of water service to the public by Applicant's Darlington Water Division are properly valued for purposes of this proceeding at **\$1,431,946** as of September 30, 2019. Both parties agree that the determination of rate base should include the unamortized acquisition adjustment (approved in Cause No. 43087) as well as an offset for accumulated deferred income taxes.¹

3. **Allowed Return.** Both parties agree that an overall rate of return on rate base of **6.87%**, as proposed by Applicant, will adequately and fairly compensate Applicant for its investments, while maintaining the financial viability of the water utility of Applicant's Darlington Water Division. Applying a **6.87%** rate of return to the fair value rate base of **\$1,431,946** would generate for purposes of this Cause a fair return of **\$98,349** for the water utility of Applicant's Darlington Water Division.

4. **Operating Results at Present Rates.** Total *pro forma* operating revenues at present rates for the water utility of Applicant's Darlington Water Division are **\$215,141** for purposes of this proceeding. With *pro forma* present total operating expenses for purposes of this proceeding at **\$151,790**, the *pro forma* net operating income under present rates for purposes of this proceeding is **\$63,351** for Applicant's Darlington Water Division. The parties agree this net operating income amount is insufficient to cover the necessary and reasonable operating expenses of Applicant's Darlington Water Division and provide the opportunity for Applicant to earn the fair return to which it is lawfully entitled.

¹ As reflected in the OUCC's report, if the acquisition adjustment and accumulated deferred income taxes had been included, rate base would be valued at \$1,436,511.

5. **Allowed Increases.** Both parties agree for purposes of settlement that the current recurring monthly rates and charges of Applicant's Darlington Water Division could be increased to levels sufficient to produce additional operating revenues of **\$48,381** from water service, which reflects an approximately **23.2%** increase in operating revenues. The above-stated amount of additional operating revenues include additional federal and state income taxes, Indiana gross receipts tax, bad debt expense, and the Commission's fee. Further, the amount of that allowed increase in additional revenues will provide Applicant an opportunity to realize adequate utility operating income, enable Applicant to maintain and support its credit and provide adequate financing, assure market confidence in its financial soundness, allow Applicant to earn a return equal to that available on other investments of comparable risk, and permit it to obtain reasonable additional capital to enable Applicant to render adequate, reliable and safe water utility services to the public.

6. **New Schedules of Rates.** In order to implement the rate increase described in Paragraph 5 above, Applicant acknowledges it shall be required to file with the Commission's Water/Wastewater Staff within thirty (30) days of the Commission's issuance of its Final Order a new schedule of rates and charges for its Darlington Water Division.

7. **Rate Design.** In its report, the OUCC noted the minimum consumption of 6,000 gallons per month Applicant used to establish its minimum charge was unusually high. The OUCC proposed Applicant be required to compare the effects of decreasing its minimum charge usage from 6,000 gallons per month to 5,000, 4,000, and 3,000 gallons per month and make a compliance filing comparing the various impacts and, if appropriate, propose a lower minimum consumption. Applicant acknowledged a lower minimum consumption was desired, but believed changing its rate design created more uncertainty that

it would meet its revenue requirement due to potential changes in customer usage patterns as a result. Applicant and the OUCC, hereafter the Settling Parties, agree to the following:

A. **Rate Design Modification Process.** Within 90 days of the final order in this Cause, Applicant will evaluate and compare the effect on its customers' rates of minimum usage charges based on minimum consumption of 6,000, 5,000, 4,000, and 3,000 gallons per month, as well as any other minimum consumption Applicant decides to compare. Applicant's evaluation shall be in written form and provided to the OUCC so that Applicant and the OUCC may attempt to reach consensus on a new minimum charge and revenue neutral rate design. If the parties reach a consensus on a proposed rate design, using the 30-day filing process Applicant shall file its evaluation and its proposed schedule of rates and charges with the Commission for approval. If the parties are unable to reach a consensus, Applicant and the OUCC shall so advise the Commission, and the rate design based on the current 6,000 gallon minimum usage charge shall continue through the next rate case. However, in its next rate case Applicant shall present rate design information for the Commission to consider a minimum usage charge based on minimum consumption lower than 6,000 gallons.

B. **Future Recovery of Costs.** The Settling Parties agree Applicant may defer any actual costs of preparing the alternative rate structures, which costs are not already embedded in its rates in this Cause, not to exceed \$2,000. To that end, Applicant may treat such costs as a regulatory asset and defer amortization until Applicant's next general rate case order. The Settling Parties agree that the amortization period should reflect the anticipated time frame the new rates may be expected to be in effect.

C. **Rate Design Adjustment Mechanism.** The Settling Parties agree that if rates are redesigned by consensus of the parties pursuant to this agreement, Applicant will be permitted to recover a qualified revenue shortfall subject to the requirements and limitations stated below. For purposes of this agreement, a revenue shortfall means Applicant has billed in a 12-month period less than the revenue requirement established in the final order in this Cause, excluding fire protection and non-recurring charges (\$242,197). (Note: \$263,522 - \$16,618 - \$4,707 = \$242,197.) Subject to the requirements and limitations below, if Applicant experiences a revenue shortfall in any of the first four 12-month periods of operation under the new rate design, applicant shall be permitted to record a regulatory asset and implement recovery of the regulatory asset in its next rate case. The first 12-month period will begin with the first full billing month under the new rate design. Recovery shall be limited to a *return of*, not a return on, the qualified regulatory asset.

D. **Qualifications for Recovery of Revenue Requirement Shortfall.**

i. Additional Cap. Although any change in rate design should be revenue neutral, Applicant believes lowering the minimum charge could result in a decrease in revenues. The only purpose of the recovery mechanism created herein is to protect Applicant from that effect. As such, Applicant should not be permitted to recover more than what it has lost as a result of a lower minimum charge. The Settling Parties agree that the regulatory asset shall be no more than (1) the revenue shortfall or (2) the “cumulative decrease in total minimum charges billed” under the new rate design, whichever is lower.

ii. Calculation of Additional Cap. The “cumulative decrease in total minimum charges billed” shall be reduced to a dollar amount when the Settling Parties agree on a new lower minimum charge. The cumulative decrease shall be calculated by multiplying the

number of customers at the end of the test year by 12 months by the “dollar decrease in minimum charge.” The “dollar decrease in minimum charge” means the difference between the per customer minimum charges made effective by the final order in this Cause and the lower per customer minimum charges subsequently established by consensus of the Settling Parties.

iii. Revenue Shortfall Due to Reasons Other Than Lower Minimum Charge.

Applicant may not employ this mechanism if, between the end of the test year and the end of regulatory asset accumulation period, Applicant’s customer count has decreased by more than 4%. In addition, Applicant may not employ this mechanism for recovery if its decrease in billings is found by the Commission in the next rate case to have been substantially due to reasons other than the change in rate design.

iv. Revenue Surplus Offset. If applicant records revenue shortfalls for one or more twelve month period but has had a revenue surplus in any of the other twelve month periods, Applicant shall be able to recover a regulatory asset only if and to the extent the shortfalls in the applicable twelve month periods exceed the revenue surplus in the other twelve month periods. (In other words, the creation of a regulatory asset shall depend on the net effect of billings for all four 12-month periods.) For this purpose, a revenue surplus means applicant has billed in the applicable twelve month period more than the revenue requirement established in this Cause.

v. Effect of Regulatory Asset. Recovery shall be limited to a *return of*, not a *return on*, the qualified regulatory asset. Applicant is not required to record or recover the regulatory asset. However, if Applicant does not implement the regulatory asset in its next rate case, any regulatory asset will cease to exist.

vi. Reporting. Within 60 days after the end of each 12 month period, Applicant shall advise the OUCC in writing whether and to what extent it has had a revenue shortfall or a revenue surplus.

vii. Recovery of Regulatory Asset. How the regulatory asset shall be recovered in rates shall be established more precisely in Applicant's next rate case. However, Applicant agrees the regulatory asset shall be recovered over a number of years that is no fewer than the reasonably expected life of the rates established in the next rate case or four years, whichever is greater. The Parties agree Applicant may extend recovery of the regulatory asset beyond the expected life of future rates to avoid rate shock. Applicant further agrees that any charge or revenue requirement to recover the regulatory asset will be eliminated upon full recovery of the regulatory asset and rates reduced accordingly.

8. Water Loss

Applicant agrees to continue to employ cost-effective solutions to reduce its water loss.

9. Scope and Approval

A. No Admission/No Waiver. Neither the making of this Settlement Agreement nor any of its provisions, including without limitation any provisions contained in exhibits to this Settlement Agreement, shall constitute in any respect an admission by any Settling Party in this or any other litigation or proceeding. This Settlement Agreement 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 any of the Settling Parties may take with respect to any or all of the issues resolved herein in any future regulatory or other proceedings.

B. **Precedential Effect.** Neither the making of this Settlement Agreement, nor the provisions thereof, nor the entry by the Commission of a Final Order approving this Settlement Agreement, shall establish any principles or legal precedent applicable to Commission proceedings other than those resolved herein. This Settlement Agreement shall not constitute nor be cited as precedent by any person or deemed an admission by any Settling Party in any other proceeding except as necessary to enforce its terms before the Commission, or any tribunal of competent jurisdiction.

C. **Authority to Stipulate.** The undersigned have represented and agreed that they are fully authorized to execute this Settlement Agreement on behalf of their designated clients, and their successors and assigns, who will be bound thereby, subject to the agreement of the Settling Parties on the provisions contained herein and in the attached exhibits.

D. **Privileged Communications.** The communications and discussions during the negotiations and conferences have been conducted based on the explicit understanding that said communications and discussions are or relate to offers of settlement and therefore are privileged and to be considered inadmissible. All prior drafts of this Settlement Agreement and any settlement proposals and counterproposals also are or relate to offers of settlement and are privileged.

E. **Support for Settlement.** The Parties believe the testimony already provided in this small utility case adequately supports a finding that revising the rate design to allow a lower minimum charge is reasonable and in the public interest subject to the process

established herein. Applicant and the OUCC shall request that the Commission issue a Final Order incorporating proposed order language agreed upon by the Settling Parties. Supportive testimony, if any, will be agreed-upon by the Settling Parties and offered into evidence without objection by any Settling Party and the Settling Parties hereby waive cross-examination of each other's witnesses.

F. **Acceptance in Entirety.** This Settlement Agreement is conditioned upon and subject to Commission acceptance and approval of its terms in their entirety, without any change or condition that is unacceptable to any Settling Party. The Settling Parties will support this Settlement Agreement before the Commission and request that the Commission accept and approve the Settlement Agreement. This Settlement Agreement is a complete, interrelated package and is not severable, and shall be accepted or rejected in its entirety without modification or further condition(s) that may be unacceptable to any Settling Party. The Settling Parties propose to submit this Settlement Agreement and evidence conditionally, and if the Commission fails to approve this Settlement Agreement in its entirety without any change or imposes condition(s) unacceptable to any adversely affected Settling Party, the Settlement Agreement and any supporting evidence may be withdrawn and the Commission will continue to proceed to a decision in the affected proceeding, without regard to the filing of this Settlement Agreement.

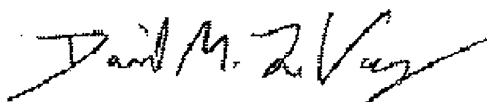
G. **Reconsideration/Appeal.** The Settling Parties shall not appeal or seek rehearing, reconsideration or a stay of any Final Order entered by the Commission approving the Settlement Agreement in its entirety without changes or condition(s) unacceptable to any Settling Party (or related orders to the extent such orders are specifically and exclusively implementing the provisions hereof) and shall not oppose this Settlement Agreement in the

event of any appeal or a request for rehearing, reconsideration or a stay by any person not a party hereto.

AGREED and **ACCEPTED** this 28th day of April, 2020.

AQUA INDIANA, INC.

**INDIANA OFFICE OF UTILITY
CONSUMER COUNSELOR**



Kari Bennett
President
Aqua Indiana

Daniel M. Le Vay
Dep. Consumer Counselor
Indiana Office of Utility Consumer Counselor