STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF THE CITY OF BOONVILLE, INDIANA, FOR APPROVAL TO ADJUST ITS RATES AND CHARGES AND ISSUE BONDS	)))	**CAUSE NO. 45069**

SUBMISSION OF JOINT PROPOSED ORDER

Petitioner, City of Boonville, Indiana ("Boonville"), by counsel, hereby submits the Joint Proposed Order which is attached as Exhibit A. Boonville shared a draft of the Proposed Order with, and then incorporated changes and comments from, the Indiana Office of Utility Consumer Counselor ("OUCC"). Undersigned Counsel represents that the OUCC does not object to the Proposed Order as submitted.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing "Submission of Joint Proposed Order" was served upon the following via e-mail this 6th day of March, 2019:

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Exhibit A

STATE OF INDIANA

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PETITION OF THE CITY OF BOONVILLE, INDIANA, FOR APPROVAL TO ADJUST ITS RATES AND CHARGES AND ISSUE BONDS	)))	**CAUSE NO. 45069**

ORDER OF THE COMMISSION

Presiding Officers:
David Ziegner, Commissioner
David Veleta, Administrative Law Judge

On March 26, 2018, the City of Boonville, Indiana ("Boonville"), filed a Verified Petition ("Petition") with the Indiana Utility Regulatory Commission ("Commission") requesting authority to adjust its existing rates and charges and issue long-term debt. Also on March 26, 2018, Boonville prefiled the direct testimony and exhibits of Clint W. Roos, a Professional Engineer, John M. Seever, a Certified Public Accountant, and Shawn Wright a project manager at Veolia Water America. On April 25, 2018, Mr. Seever filed Supplemental Testimony and an amended exhibit to correct two (2) schedules contained within his March 26, 2018 prefiled testimony and exhibits.

On May 29, 2018, Indiana-American Water Co., Inc. ("IAWC") filed its Petition to Intervene, which was granted by a Commission docket entry on June 12, 2018. On August 3, 2018, the Indiana Office of Utility Consumer Counselor (OUCC) prefiled the testimonies and exhibits of James T. Parks, Edward R. Kaufman, and Margaret A. Stull.

On August 29, 2018, Boonville filed its Unopposed Motion to Modify Procedural Schedule and Vacate September 18, 2018 Evidentiary Hearing, which was granted by Commission docket entry on September 4, 2018. On September 5, 2018, Boonville filed the Supplemental Testimony and Exhibits of Messrs. Seever, Wright, and Roos. On October 3, 2018, the OUCC filed the Supplemental Testimony and Exhibits of Messrs. Kaufman and Parks. On October 19, 2018, Boonville filed the Rebuttal Testimony and Exhibits of Messrs. Seever, Wright, and Roos.

On February 8, 2019, Boonville filed a Joint Stipulation and Settlement Agreement ("Settlement Agreement") that had been executed by Boonville and the OUCC along with the prefiled Settlement Testimony and Exhibits of Messrs. Seever and Roos. On February 20, 2019, the OUCC prefiled the Settlement Testimony of Ms. Stull.

Pursuant to notice as required under Indiana law, the Commission conducted an evidentiary hearing in this Cause on March 6, 2019, at 10:30 a.m. EST, in Hearing Room 222, 101 West Washington Street, Indianapolis, Indiana. At the hearing, Boonville and the OUCC offered their respective testimony and exhibits, which were admitted into the record without objection. No members of the public attended or attempted to participate in the evidentiary hearing.

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

1. **Statutory Notice and Commission Jurisdiction**. Notice of the time and place of the hearings conducted by the Commission in this Cause was given as required by law. Boonville is a municipally owned utility, subject to the Commission's jurisdiction as defined in Indiana Code § 8-1-2-1(h). Boonville seeks approval to changes in its rates and charges pursuant to Indiana Code § 8-1-2-42 and 8-1.5-3-8. Accordingly, the Commission has jurisdiction over Boonville and the subject matter of this Cause.

2. **Boonville's Characteristics**. Boonville furnishes water to the public in and around Boonville's municipal limits, and collects rates and charges for the use of, and service rendered by, its municipal water system. Boonville serves approximately 3,700 residential, commercial, and industrial customers in and around Boonville, including providing wholesale water service to Indiana American Water Co., Inc. Boonville obtains its raw water via wells, and its facilities include a treatment plant with a capacity of approximately 2.88 million gallons per day ("mgd"), three storage tanks with a capacity of 1.5 million gallons, over 50 miles of water main, and various other booster stations, service pumps, and facilities necessary for the provision of water utility service.

3. **Existing Rates and Test Year.** Boonville's existing rates and charges were established in a Final Order issued by the Commission on April 8, 2009, in Cause No. 43477. Boonville seeks approval in this matter to adjust its rates and charges based on a test year ending June 30, 2017, and adjusted for changes which are fixed, known, and measurable, and occurring within 12 months.

4. **Boonville's Requested Relief.** Boonville originally proposed to adjust its rates and charges by $1,160,735 (or 67.57%) over two phases, on an across-the-board basis pursuant to an accounting report that was prepared by H.J. Umbaugh & Associates ("Umbaugh"), which was admitted into the record as Petitioner's Exhibit 5. In addition to requesting an adjustment to its rates, Boonville also sought authority to issue up to $7,000,000 in water utility revenue bonds ("2019 Bonds") to the United States Department of Agriculture – Rural Development ("Rural Development"). Boonville proposes to use the proceeds from the 2019 Bonds to finance improvements to its water facilities.

5. **Opposition and Rebuttal.** The OUCC raised several challenges to Boonville's requested relief, which included: (i) opposing the recovery for several of Boonville's proposed capital improvement projects; (ii) challenging the proposed financing of several projects that the OUCC believed should be recovered through the allowance for O&M; (iii) challenging certain periodic maintenance expenses and other expenses; and (iv) adjusting assumptions built into Boonville's proposed debt amortization schedule. Taking into account those and other changes, the OUCC recommended a proposed increase to Boonville's test year revenue requirement of $671,226 (or 41.98%). The OUCC also recommended, limiting Boonville's total debt issuance for its proposed capital improvement projects to $2,620,000; denying Boonville's proposed surcharge

for customers outside of its municipal boundaries; and various other adjustments to calculate Boonville's pro forma revenue requirement and the recommended increase in revenue from rates and charges. In its rebuttal evidence, Boonville agreed to a number of the OUCC's recommendations and continued to oppose others.

6. Settlement Agreement. The Settlement Agreement filed with the Commission on February 8, 2019, presents the parties' resolution of all of the issues in this Cause. The Settlement Agreement is attached to this Order and incorporated by reference. The witnesses offering settlement testimony described the arm's-length nature of the negotiations and the efforts taken to reach a balanced settlement that fairly resolves the issues. The Settlement Agreement and supporting evidence are reviewed below.

Mr. Seever testified that the parties agreed to an across-the-board increase in Boonville's existing rates and charges over three phases, resulting in a net revenue requirement of $2,511,544 after the three increases. Mr. Seever testified that to reach compromise, Boonville and the OUCC made substantial concessions that otherwise would have been litigated. He stated that because Boonville's available cash on hand is reaching low levels, it is in Boonville's best interest to have an expedited resolution of this matter so that it can timely implement its Phase 1 rate increase and continue operating and maintaining its system in good repair.

Mr. Roos testified he has spoken to Boonville and to its contractual operator (Veolia North America) and all agree that the revenue requirements calculated in the Settlement Agreement will provide sufficient funds so that Boonville can operate and maintain its system. Mr. Roos stated that Settlement Agreement will provide immediate rate relief needed by Boonville due to a shortage of funds and that the requested relief should allow Boonville to provide safe and efficient service to its customers.

Ms. Stull testified that the Settlement Agreement results in a 52.59% increase in revenue requirement and that the three-phase implementation schedule will allow immediate alignment of Boonville's pro forma rate revenue with its pro forma operating expenses in Phase 1. Phases 2 and 3 will address the agreed debt issuance and other post-in-service adjustments. Ms. Stull testified that the Settlement Agreement represents a compromise that both the OUCC and Boonville support as fair, reasonable, and beneficial to the utility and its customers.

While these witnesses testified to the reasonableness of the settlement as a whole, their respective testimony also supported the specific terms of the Settlement Agreement as discussed below.

A. Periodic Maintenance. Mr. Seever testified that the OUCC agreed to Boonville's requested amount of $187,700 per year for periodic maintenance. In return, Boonville agreed to perform all periodic maintenance, including painting and maintenance on its water tanks, from the $187,700 annual amount. In light of the agreement, Boonville will remove the cost of its proposed water tank painting and rehabilitation program from the total amount of its proposed debt issuance. Mr. Seever also testified that Boonville agreed to place the full $187,700 annual amount of periodic maintenance expense in a restricted account that can only be used to pay periodic maintenance expense items. In the case of an emergency, the restricted funds may also be used for debt service or debt service reserve, but Boonville must notify the OUCC and the

Commission in writing if such an event occurs. The notice must explain the emergency, Boonville's plans to address the emergency, and Boonville's plans to replenish the restricted account. Based on discussion with the contractual operator, Mr. Roos testified that the $187,700 annual periodic expense amount will be sufficient to operate and maintain the system, including the completion of any repairs required for water storage facilities.

Ms. Stull testified that in exchange for the OUCC agreeing to the increase in annual allowance for periodic maintenance expenses, Boonville removed the tank painting costs from its proposed debt-funded capital improvement projects. Ms. Stull stated that tank painting is a maintenance activity, not a capital investment, and that the agreement protects ratepayers from funding debt service and reserve requirements for the tank painting project. With respect to maintaining the periodic maintenance funds in a restricted account, Ms. Stull testified that this and similar other restrictions on the use of funds will help ensure that Boonville meets its commitments in the Settlement Agreement to pay certain expenses or fund capital investments without using revenue obtained through rates.

B. Capital Improvements.

(1) Water Main Projects. Mr. Seever testified that in addition to removing the water tower improvements from the proposed debt issue, Boonville has agreed to the following modifications to its proposed capital improvements related to main extensions:

- the Jenner Road portion of the main extension project should be eliminated (a reduction of $220,000);
- only 20% of the State Road 261 and State Road 61 projects should be funded by the debt issue;
- the remaining cost of these projects would either be recovered through grants or other non-ratepayer funds of Boonville;
- if Boonville is unable to obtain the additional funds necessary to complete these projects, then the cost of the projects will be removed from the debt issue prior to the implementation of Phase 2 rates, and phase 2 rates will be lowered accordingly.

Mr. Seever testified that the 20% number was a negotiated compromise.

Ms. Stull testified that the OUCC challenged Boonville's proposed water main extension projects as presented in its case-in-chief on the grounds that the extensions were not necessary, were oversized, or should be paid for by the landowner or developer who requested the extensions, consistent with the Commission's main extension rule.

(2) Solar Field Project. Mr. Seever testified that the parties agreed that the proposed solar field project is economical and could move forward if Boonville receives a grant from Rural Development for at least $100,000 to make the solar projects more economical. If no grant is received, then Boonville has agreed to remove the cost of the solar field project from the proposed debt issue and reduce Phase 2 rates accordingly.

Mr. Roos prepared a revised feasibility analysis of the solar field project in light of the terms of the Settlement Agreement. The revised analysis also incorporated several recommendations from OUCC witness Mr. Kaufman. Mr. Roos testified that Boonville received a quote from its contractual utilities operator (i.e. Veolia North American) who has stated that it is willing to perform the necessary maintenance for the amount set forth in the revised feasibility analysis. Mr. Roos has also spoken with Rural Development, which has confirmed that Boonville is eligible for a grant. Mr. Roos stated his understanding from the conversation with Rural Development that it would look more favorably on Boonville's grant request if it includes green projects such as the solar field project.

Ms. Stull testified that requiring Boonville to obtain at least $100,000 in funding for the solar field project through a Rural Development grant or other non-ratepayer source of funding will reduce the amount of debt that Boonville has to incur. This will, in turn, reduce the cost to rate payers of debt-service obligations related to the projects. Ms. Stull testified that another condition of the project is that Boonville will reduce its annual revenue requirement by $50,000 in Phase 3 to account for the purchase power expense savings once the solar field is producing energy for use by the utility.

(3) Water Meter Replacements. Mr. Seever testified that the parties agreed to reduce the amount of the proposed meter replacement project from $1,978,020 to $1,593,020, including construction contingencies.

Ms. Stull testified that the OUCC objected to Boonville's plan to replace all of its customers' meters at one time rather than following a traditional multi-year meter replacement schedule. Ms. Stull said that after negotiating a reduced cost estimate for the meter replacement project, the OUCC agreed to include the total amount in Boonville's proposed long-term, low-interest bond issuance. That will allow the total cost of purchasing and installing the new advanced meters to be recovered over a longer period of time than Boonville originally proposed, which will reduce the annual rate impact of the project.

C. Proposed Borrowing, Debt Service, and Debt Service Reserve. Mr. Seever testified that the parties agreed to a proposed borrowing of $4,317,000 based on the elimination of the projects discussed above. He stated that an additional $1,425,156 is estimated to come from grants and other non-ratepayer funds. This reduction in the proposed debt issue reduces the annual principal and interest payments from $315,894 to $194,147. It also reduces the debt service reserve requirements from $63,156 to $19,415. Mr. Seever testified that the parties agreed to a maximum interest rate of 6%, which is consistent with Boonville's direct testimony and exhibits. Boonville will true up the actual interest rate prior to the implementation of the Phase 2 rates. Mr. Seever said that Boonville agrees that the issuance of the proposed bonds, grants, and other supplemental funding is reasonable and that Rural Development will provide the lowest annual debt service for Boonville.

Ms. Stull agreed that Boonville's debt issuance to fund various projects will be addressed in the Phase 2 rates. She testified that a true-up will be filed for Phase 2 rates after removing any projects for which Boonville fails to meet the applicable conditions discussed above and after the bond closing date. Ms. Stull testified that Boonville has agreed that if it spends any funds collected for debt service reserve for any purpose other than making the final payment on the bond issuance, it must provide a detailed report to the Commission and the OUCC within five days of making such expenditure.

D. Expense Adjustments. Mr. Seever described the following expense and revenue adjustments that the parties agreed to in the Settlement Agreement.

(1) Rate Case Expense. Mr. Seever testified that the parties agreed to the rate case expense recovery that Boonville proposed in its Direct Testimony, namely $200,000, amortized for recovery over 5 years, or $40,000 per year.

(2) PERF Expense. Mr. Seever testified that the parties agreed to an adjustment for Public Employee Retirement Fund ("PERF") expense in the amount of $8,840, which includes an adjustment to non-cash PERF expense of $4,239.

Ms. Stull testified that similar to the periodic maintenance expense funds, Boonville has agreed to hold annual non-cash PERF expense funds in a restricted, interest-bearing account. Boonville has agreed to seek prior Commission approval before using any of the restricted non-cash PERF expense funds for any purpose.

(3) Depreciation Expense. Mr. Seever testified that Boonville agreed with the OUCC's methodology for calculating the amount of depreciation for Boonville's existing facilities. He said that the parties have also agreed on the approximate depreciation expense to be included in the Phase 3 rates for the projects completed under the Settlement Agreement. The parties have agreed to discuss whether any further adjustments are necessary once the actual final project costs are known.

(4) Payment in Lieu of Taxes ("PILOT"). Mr. Seever testified that Boonville agreed to remove all utility plant that is located outside city limits when calculating PILOT. He also testified that the OUCC agreed that it had inadvertently understated PILOT by $35,734 in its direct testimony. As a result, the parties agreed that the appropriate amount of PILOT for Boonville is $110,293.

E. Rates and Charges.

(1) Updated Tap Fee. Mr. Seever testified that as part of the Settlement Agreement, Boonville has agreed to update its tap fee by making a 30-day filing on or before June 30, 2019.

(2) Outside City Rate. Mr. Seever testified that Boonville proposed a higher rate for customers outside of the city limits based on an allocated portion of the economic development income taxes paid by Boonville residents for the water treatment plant and a rate of return based on the cost of facilities necessary to serve outside-the-city customers. He said that the parties have agreed to an outside-the-city rate increment of approximately 9%. This amount includes the amount of economic development income taxes that would be allocated to the outside-the-city customers but excludes a rate of return.

Ms. Stull testified that Mr. Seever provided adequate support and explanation for the 9% outside-the-city surcharge. However, Ms. Stull stated that circumstances could change in the future that justify revisiting this issue in a future rate case.

7. Commission Discussion and Findings. As we have stated on many occasions, 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, 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., citing Citizens Action Coalition v. PSI Energy*, 664 N.E.2d 401, 406 (Ind. Ct. App. 1996). The Commission "may not accept a settlement merely because the private parties are satisfied; rather it must consider whether the public interest will be served by accepting the settlement agreement." *Citizens Action Coalition*, 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. *United States Gypsum*, 735 N.E.2d at 795 (*quoting Citizens Action Coalition v. Public Service Co.*, 582 N.E.2d 330, 331 (Ind. 1991)). Therefore, before this Commission can approve the Settlement Agreement, we must determine whether the evidence in this Cause sufficiently supports the conclusion that the Settlement Agreement is reasonable, just, and serves the public interest.

The Commission has carefully analyzed the evidence and the proposed Settlement Agreement to evaluate whether the proposed outcome is reasonable and in the public interest. Based on that review and as further discussed in this Order, we conclude that the Settlement Agreement is reasonable and in the public interest and should be approved.

Indiana Code § 8-1.5-3-8, which governs the rates of municipal water utilities, requires that a water utility furnish reasonably adequate services and facilities and that the utility's rates and charges be non-discriminatory, reasonable, and just. Section 8(c) specifically identifies the revenue requirements to be considered in establishing the utility's rates and charges including: (1) all legal and other expenses incident to the utility's operation; (2) a sinking fund for the liquidation of bonds or other obligations; (3) debt service reserve; (4) working capital; (5) extensions and replacements to the extent not provided for through depreciation; and (6) taxes. Section 8(e) further provides that the Board may recommend to the municipal legislative body rates and charges sufficient to include a reasonable return on the utility plant of the municipality.

In this case, the parties have presented a Settlement Agreement which both agree adjusts Boonville's rates and charges on an across-the-board basis for Boonville residents, with a surcharge of 9% for customers located outside the city limits, to generate sufficient funds to issue bonds, pay for its operation and maintenance expenses, and complete certain capital improvements. In addition, the Settlement Agreement provides important safeguards to Boonville's customers to ensure that revenues collected from them are utilized appropriately by the utility and specifically that funds collected for the ongoing maintenance of the utility system are used for that purpose. Perhaps most importantly, the Settlement Agreement provides much needed cash-on-hand to the utility as quickly as possible so that it can maintain its standards of service and maintenance while mitigating the initial impact of the rate increase and spreading the increase over 3 phases.

We accept the evidence presented by the parties concerning the specific terms of the Settlement Agreement set forth above, and we find that these specific terms and the Settlement Agreement as a whole are within the range of possible outcomes had this case been litigated and represent a just and reasonable resolution of the disputed issues in this case that balances the utilities need to collect sufficient revenues with the public interest. As such we approve the Settlement Agreement in its entirety.

Consistent with the foregoing findings and our conclusion with respect to the Settlement Agreement, we find that net revenue requirement and resulting increase in annual revenues for the 3 phases of increases shall not exceed the amounts set forth in the tables below, subject to true up in Phase 2 and Phase 3.

PHASE 1

Operating Expenses	$ 1,458,623
Payment in Lieu of Property Taxes	110,293
Additional Utility Receipts Tax	8,271
Depreciation Expense	272,876
Working Capital	0
Debt Service	436,413
Debt Service Reserve	0
Total Revenue Requirements	2,286,476
Less: Revenue Requirement Offsets	
Miscellaneous Service Revenue	(17,072)
Interest Income	(10,677)
Other Income	(22,062)
Net Revenue Requirements	2,236,665
Less: Revenues at Current Rate Subject to Increase	(1,645,898)
Net Revenue Increase Required	$ 590,767
Calculated Percentage Increase	35.89%

PHASE 2

Operating Expenses	$ 1,458,623
Payment in Lieu of Property Taxes	110,293
Additional Utility Receipts Tax	10,786
Depreciation Expense	272,876
Working Capital	0
Debt Service	630,560
Debt Service Reserve	19,415
Total Revenue Requirements	2,502,553
Less: Revenue Requirement Offsets	
Miscellaneous Service Revenue	(17,072)
Interest Income	(47,098)
Other Income	(22,062)
Net Revenue Requirements	2,416,321
Less: Revenues at Phase 1 Rates Subject to Increase	(2,236,665)
Net Revenue Increase Required	$ 179,656
Calculated Percentage Increase	8.03%

PHASE 3

Operating Expenses	$ 1,408,623
Payment in Lieu of Property Taxes	110,293
Additional Utility Receipts Tax	12,119
Depreciation Expense	384,468
Working Capital	0
Debt Service	630,560
Debt Service Reserve	19,415
Total Revenue Requirements	2,565,478
Less: Revenue Requirement Offsets	
Miscellaneous Service Revenue	(17,072)
Interest Income	(14,800)
Other Income	(22,062)
Net Revenue Requirements	2,511,544
Less: Revenues at Phase 2 Rates Subject to Increase	(2,416,321)
Net Revenue Increase Required	$ 95,223
Calculated Percentage Increase	3.94%

8. **<u>Effect of the Settlement Agreement</u>.** Consistent with its terms, the Settlement Agreement is not to 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 or of this Order, we find that our approval 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).

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

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

2. Boonville is authorized to adjust and increase its base rates and charges for water utility service in three (3) phases, with the increase in each phase not to exceed the estimated amounts set forth in the tables in Paragraph 7 above. Phase 2 and Phase 3 rates remain subject to true-up.

3. Prior to implementing the rates approved for each Phase of the approved 3-phase rate increase, Boonville shall file its revised tariff and applicable new rate schedules under this Cause for approval by the Commission's Water/Sewer Division. The rates in Phase 1 shall be effective on or after the Order date subject to the Water/Sewer Division's review approval thereof. The same steps must be followed in Phase 2 and Phase 3, after the condition that triggers each subsequent rate increase have been met, all subject to true-up.

4. In accordance with Ind. Code § 8-1-2-70, Petitioner shall pay within 20 days from the date of this Order, and prior to placing into effect the rates approved herein, the following itemized charges as well as any additional charges which were or may be incurred in connection with this Cause:

Commission Charges	$__________
OUCC Charges	$__________
Legal Advertising Charges	$__________
Total	$__________

Petitioner shall pay all charges into the Commission public utility fund account described in Ind. Code § 8-1-6-2, through the Secretary of the Commission.

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

<u>HUSTON, FREEMAN, KREVDA, OBER, AND ZIEGNER CONCUR:</u>

APPROVED:

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

____

Mary M. Becerra
Secretary to the Commission

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