

**STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION**

PETITION OF THE CITY OF ELKHART,)
INDIANA, FOR AUTHORITY TO ISSUE)
BONDS, NOTES, OR OTHER OBLIGATIONS)
FOR AUTHORITY TO INCREASE ITS) **CAUSE NO. 46010**
RATES AND CHARGES FOR WATER)
SERVICE, AND FOR APPROVAL OF)
NEW SCHEDULES OF RATES AND)
CHARGES)

JOINT STIPULATION AND SETTLEMENT AGREEMENT

On February 5, 2024, the City of Elkhart, Indiana (“Petitioner” or “Elkhart”) filed with the Indiana Utility Regulatory Commission (the “Commission”) its Petition initiating this Cause. Elkhart filed its case-in-chief on July 2, 2024 and its Amended Petition on July 8, 2024. On February 9, 2024, the Indiana Office of the Utility Consumer Counselor (“OUCC”) filed its appearance and designation of attorney.

The OUCC engineering representative met with Elkhart’s Water Utility staff, held a question-and-answer session and made site visits to the wellfields. The OUCC accounting representatives met with Elkhart’s Water Utility staff and were given access to all requested documents. Elkhart timely responded to both informal and formal discovery requests. After extensive review of the documents submitted in Elkhart’s case-in-chief, as well as the discovery responses, the parties engaged in multiple settlement conferences. On October 7, 2024, the OUCC filed *Public’s Notice of Settlement in Principle and Notice of Intent Not to File Contesting Testimony*.

Elkhart and the OUCC, (collectively, the “Parties”, and individually, a “Party”) have after arms-length settlement negotiations reached an agreement with respect to all of the issues before

the Commission in this Cause. The Parties therefore stipulate and agree for purposes of resolving all of the issues in this Cause, to the terms and conditions set forth in this Joint Stipulation and Settlement Agreement.

1. Borrowing Authority.

- A. Approval of Debt; Authorization to Issue Bonds. Subject to the provisions of this agreement, the Parties stipulate and agree that the Commission should authorize Elkhart to issue water utility revenue bonds (the “Bonds”) in a principal amount not to exceed \$29.665 million consisting of the \$12.815 million principal amount for which Elkhart requested authority in its case-in-chief and \$16.85 million to be used only for subsidized lead service line replacements and/or PFAS remediation projects.
- B. Borrowing Embedded in Initial Rates. The Parties agree initial rates shall align with Petitioner’s proposed debt service and debt service reserve revenue requirements derived from Petitioner’s estimated interest rates, terms, structure (interest-only and wrapping) for the proposed debt service and debt service reserve expense based on borrowings of \$8.355 million, plus a \$1.5 million grant for replacing lead service lines.
- C. Borrowing Authority & Capital Projects. The Parties agree that in order to complete the capital projects identified in Petitioner’s case and cover any cost overruns on those projects, Petitioner should receive \$12.815 million of debt authority, subject to true up. If funds are available, Petitioner will use such funds to address projects identified in Attachment 1. However, Petitioner retains the discretion to use such funds to meet unanticipated and unforeseen events that may arise, making an unidentified project necessary to complete in order to continue the provision of safe drinking water.
- D. Additional Borrowing Authority for PFAS and Lead Line Replacement. The Parties agree that the exact cost of any required PFAS remediation and lead service line replacement is unknown at this time. The Parties agree that in addition to the borrowing authority of \$12.815 million, Petitioner shall have additional borrowing authority of \$16.85 million for a total debt authorization of

\$29.665 million. The Parties agree the additional \$16.85 million of borrowing authority may only be used for subsidized lead service line replacement projects or PFAS projects. The parties acknowledge Petitioner's E&R revenue requirement includes \$142,857 for cash funded lead service line replacement projects. The parties agree these monies can and should be converted to make debt service payments to secure lead service line replacements through borrowings. Debt service and any debt service reserve expense on the additional borrowing shall be met with such funds reallocated from Petitioner's E&R revenue requirement. Accordingly, the Parties agree Petitioner will not be required or authorized to true-up rates on bond issuances pursuant to the additional borrowing authority of \$16.85 million. The Parties agree that unused financing authority shall expire on December 31, 2030.

- E. True-Up. Within thirty (30) days of closing on the Bonds, Elkhart shall file a report with the Commission and serve a copy on the OUCC, explaining the terms of the new loan, including an amortization schedule, the amount of debt service reserve, and all issuance costs (e.g., fee for bond counsel, municipal advisor, and all other fees). The report should include a revised tariff and also calculate the rate impact in the same manner as the schedules set forth in Attachment 2 hereto ("Agreed Schedules"). Elkhart's rates should be adjusted to match its actual cost of debt service. Any true-up report should state the time frames for objections or responses.
- i. The Parties agree that the OUCC and any interested intervenor has twenty-one (21) days after service of the true-up report within which to file an objection with the Commission. The Parties agree that Petitioner shall have twenty-one (21) days within which to file a response to the objection Party or Parties. Thereafter, the Commission should resolve any issue raised through a process it deems appropriate.
 - ii. If both parties state in writing that the increase or decrease indicated by the report need not occur because the increase or decrease would be immaterial, the true-up need not be implemented.

2. Stipulated Revenues.

- A. Operating Revenues. The Parties stipulate and agree that Elkhart's adjusted test year operating revenue at present rates is \$7,071,183, which is the test year Operating Revenues amount of \$7,108,570 minus an adjustment of \$37,387 to use a three-year average (not including Covid) as depicted on Schedule 4 to the Agreed Schedules.
- B. Revenue Requirement. The Parties stipulate and agree that Elkhart's current rates and charges are inadequate and that, subject to the True-Up provision set forth in Paragraph 1.C. above, Elkhart's rates and charges should be increased as follows:
- i. Phase I: Elkhart's rates and charges should be immediately increased upon the issuance of a Commission Order pursuant to the allocations set forth in Section 3 below by 32.25% so as to produce \$2,228,177 in additional annual operating revenue.
 - ii. Phase II: Effective no sooner than thirty days before the scheduled closing on the Series 2026 debt, Elkhart's Phase I rates and charges should be increased pursuant to the allocations set forth in Section 3 below by 3.29% so as to produce \$300,347 in additional annual operating revenue.
 - iii. Phase III: Effective no sooner than thirty days before the scheduled closing on the Series 2027 debt, Elkhart's Phase I rates and charges should be increased pursuant to the allocations set forth in Section 3 below by 2.96% so as to produce \$278,905 in additional annual operating revenue.
- C. Pro Forma Authorized Revenues. After adjustments (including the issuance of the Bonds), subject to the True-Up provision set forth in Paragraph 1C above, the Parties stipulate and agree that Elkhart's pro forma operating revenues will be \$9,299,360 for Phase I, and \$9,599,707 for Phase II, and \$9,878,612 for Phase III, as shown in Schedule 3 of the Agreed Schedules. The Parties further stipulate and agree that Elkhart's revenue requirements for the rate increase is

depicted on Schedule 3 to the Agreed Schedules. The Parties stipulate and agree that the revenue increases provided herein are just and reasonable and should be approved.

- D. Financial Schedules. The Parties stipulate for settlement purposes to the Agreed Schedules, including all adjustments identified therein.
3. **Agreed Tariff.** The Parties agree that the proposed tariff setting forth Phase I and anticipated Phase II and Phase III rates, attached as Attachment 2, Schedule 12 Tariffs, hereto sets forth rates that are reasonable, just and non-discriminatory and that such proposed tariff should be approved.
4. **Submission of Evidence.** The Parties stipulate to the admission into evidence in this Cause of the testimony previously filed by the Petitioner, and any testimony in support of this Settlement offered by the Parties. Further, each Party waives cross-examination of the other's witnesses with respect to such testimony. The Parties shall not offer any further testimony or evidence in this proceeding, other than this Settlement and the above-identified testimony and exhibits. If the Commission should request additional evidence to support the Settlement, the Parties shall cooperate to provide such requested additional evidence.
5. **Settlement Fair and Reasonable; Proposed Final Order.** The Parties stipulate and agree that the terms of this Settlement represent a fair, reasonable, and just resolution of all the issues in this Cause, provided they are approved by the Commission in their entirety without material change, except as provided in Paragraph 7, hereof. The Parties agree to cooperate on the preparation and submission to the Commission of a proposed order that reflects the terms of this Settlement and the settlement testimony submitted pursuant to Section 5 hereof.
6. **Sufficiency of Evidence.** The Parties stipulate and agree that the evidentiary material identified immediately above constitutes a sufficient evidentiary basis for the issuance of a final order by the Commission adopting the terms of this Settlement, and granting the relief as requested herein by Elkhart and agreed to by the Parties.
7. **Commission Alteration of Agreement.** The concurrence of the Parties with the terms of this Settlement is expressly predicated upon the Commission's approval of this

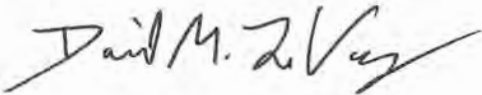
Settlement. If the Commission alters this Settlement in any material way, unless that alteration is unanimously and explicitly consented to by the Parties, this Settlement shall be deemed withdrawn.

8. **Authorization.** The undersigned represent that they are fully authorized to execute this Settlement on behalf of their respective clients or parties, who will be bound thereby.
9. **Non-Precedential Nature of Settlement.** The Parties stipulate and agree that this Settlement shall not be cited as precedent against any Party in any subsequent proceeding or deemed an admission by any Party in any other proceeding, except as necessary to enforce the terms of this Settlement or the final order to be issued in this Cause before the Commission or any court of competent jurisdiction on these particular issues and in this particular matter. This Settlement is solely the result of compromise in the settlement process and, as provided herein, is without prejudice to and shall not constitute a waiver of any position that any Party may take with respect to any or all of the items resolved herein in any future regulatory or other proceeding, and, failing approval by the Commission, shall not be admissible in any subsequent proceeding.
10. **Counterparts.** This Settlement may be executed in one or more counterparts (or upon separate signature pages bound together into one or more counterparts), all of which taken together shall constitute one agreement.


IN WITNESS WHEREOF, the parties have executed this Settlements on the dates set forth below.

**INDIANA OFFICE OF UTILITY CONSUMER
COUNSELOR**

THE CITY OF ELKHART, INDIANA

By: 

Daniel M. Le Vay
Senior Deputy Consumer Counselor
Indiana Office of Utility Consumer Counselor
115 W. Washington Street, Suite 1500 South
Indianapolis, IN 46204
Email: dlevay@oucc.in.gov
infomgt@oucc.in.gov

By: 

Margaret M. Marnocha, Counsel of Record
PUBLIC WORKS & UTILITIES
City of Elkhart, Indiana
1201 S. Nappanee St.
Elkhart, IN 46516
Email: Maggie.Marnocha@coei.org

Dated: October 31, 2024


Dated: 11/4/24, 2024

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the *Joint Stipulation and Settlement Agreement* was electronically served on the following parties of record on the date filed.

Margaret M. Marnocha, Assistant City Attorney
PUBLIC WORKS & UTILITIES
City of Elkhart, Indiana
1201 S. Nappanee St.
Elkhart, IN 46516
Email: Maggie.Marnocha@coei.org

Daniel M. Le Vay
Senior Deputy Consumer Counselor
Indiana Office of Utility Consumer Counselor
115 W. Washington Street, Suite 1500 South
Indianapolis, IN 46204
Email: dlevay@oucc.in.gov
infomgt@oucc.in.gov



Margaret M. Marnocha