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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF BROWN )  
COUNTY WATER UTILITY, INC., OF )  
MORGANTOWN, INDIANA, FOR (1) THE )  
AUTHORITY TO INCREASE ITS RATES AND )  
CHARGES FOR WATER SERVICE, (2) FOR )  
APPROVAL OF A COST OF SERVICE STUDY )  
AND RATE DESIGN, AND (3) FOR APPROVAL )  
OF A NEW SCHEDULE OF RATES AND )  
CHARGES FOR WATER SERVICE )

CAUSE NO. 45210

APPROVED: JAN 02 2020

ORDER OF THE COMMISSION

**Presiding Officers:**

**David L. Ober, Commissioner**

**Carol Sparks Drake, Senior Administrative Law Judge**

On March 7, 2019, Brown County Water Utility, Inc. (“BCW” or “Petitioner”) filed a Verified Petition with the Indiana Utility Regulatory Commission (“Commission”) seeking authority to increase Petitioner’s water rates and charges, approval of a cost of service study (“COSS”) and rate design, and approval of a new schedule of water rates and charges.

On April 10, 2019, BCW filed the direct testimony and exhibits of the following witnesses:

- Ben Phillips, President of BCW’s Board of Directors;
- Ben Foley, Certified Public Accountant and Principal in Sherman, Barber, and Mullikin, a Professional Corporation;
- Lori A. Young, Professional Engineer and President of Curry and Associates, Inc.; and
- Darrell Baker, Operation/Field Service Manager at BCW.

On April 22, 2019, the Town of Nashville, Indiana, (“Nashville”) filed a petition to intervene. Nashville’s petition was granted in a docket entry issued on May 3, 2019. Subsequently, multiple motions were filed to amend the procedural schedule, with BCW, Nashville, and the Indiana Office of Utility Consumer Counselor (“OUCC”) (collectively, the “Parties”) ultimately filing a joint notice and request on August 23, 2019, advising the Commission: (a) a settlement in principle had been reached with respect to BCW’s revenue requirement; (b) the Parties had agreed to bifurcate this Cause to separately address Petitioner’s revenue requirement and rate design issues; (c) the agreed rate increase should be implemented across-the-board in Phase 1; (d) if the rate design issue is not dismissed or otherwise resolved, this issue will be presented in Phase 2;

and (e) a new procedural schedule that bifurcates the hearing in this Cause consistent with the foregoing should be established.

On August 27, 2019, a docket entry was issued revising the procedural schedule and granting the joint request to bifurcate this matter. BCW's revenue requirement is being considered first in Phase 1, and its COSS and rate design are to be the subject of Phase 2. This Order is limited to considering whether BCW's rates and charges should be increased and if so, the appropriate increase to be applicable across-the-board in the interim before BCW's rate design is presented and acted upon.

On September 11, 2019, BCW filed the Parties' Stipulation and Settlement Agreement ("Settlement Agreement"). Also on September 11, 2019, the Parties each prefiled settlement testimony supporting the Settlement Agreement. BCW prefiled settlement testimony for Ellen F. Masteller, BCW's Office Manager. Nashville prefiled the settlement testimony of Jane Gore, Nashville's Town Council President, and the OUCC prefiled settlement testimony for Carla F. Sullivan, Utility Analyst II in the OUCC's Water/Wastewater Division.

On October 18, 2019, a docket entry was issued requesting Petitioner to provide additional information and/or documentation with respect to a debt service reserve account and BCW's restricted asset accounts for tank and well maintenance. BCW on October 23, 2019, filed responses to this docket entry.

An evidentiary hearing was held on October 25, 2019, at 9:30 a.m. in Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana, upon BCW's revenue requirements and the Parties' agreed, proposed rate increase. The Parties were present, by counsel, and participated. The testimony of the respective Parties was offered and admitted without objection, with their settlement testimony focusing upon BCW's revenue requirements and the interim rate relief the Parties agreed upon for purposes of Phase 1. IURC Administrative Notice Exhibits 1, 2, and 3 were also admitted without objection. Petitioner's witnesses Phillips and Foley were made available and responded to questions from the Presiding Officers. This Order is limited to considering whether BCW's rates and charges should be increased and the appropriate interim relief for purposes of Phase 1.<sup>1</sup>

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<sup>1</sup> An attorneys' conference with the Presiding Officers was held on October 25, 2019, immediately after the evidentiary hearing (the "Attorneys Conference") to discuss Phase 2 and related anticipated legal issues. Specifically, although not yet part of the record in this Cause, on October 23, 2019, BCW's counsel informally provided the Presiding Administrative Law Judge with a copy of an Agreement of Settlement that BCW and Nashville entered into on October 22, 2019, to resolve litigation pending in the United States District Court Southern District of Indiana, Indianapolis Division, as Cause No. 1:17-cv-02134-TWP-TAB (the "Federal Litigation") and an Order entered that same day in the Federal Litigation (the "Federal Order"). Counsel was unable to explain to the Presiding Officers at the Attorneys Conference why the Agreement of Settlement in the Federal Litigation does not conflict with the regulatory ordinance the Commission approved on February 7, 2018, in Cause No. 44944 (the "44944 Order") and, therefore, how the Agreement of Settlement in the Federal Litigation can be implemented given the 44944 Order and Ind. Code § 8-1.5-6-9(e). The Parties were requested to assure these legal questions are analyzed and addressed during Phase 2. The Presiding Officers also inquired about what "approval" the Commission is to render within 90 days under the Federal Order, noting the Federal Order and the Agreement of Settlement were not yet of record in this proceeding, and the relief requested in this Cause has not been modified to include such approval; consequently, the Parties were directed to consider and address these matters in connection with Phase 2 and appropriately amend the pending petition if relief beyond what has been noticed is sought.

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

1. **Notice and Jurisdiction.** Due, legal, and timely notice of the evidentiary hearing was given and published as required by law. Petitioner is a not-for-profit utility as defined in Ind. Code § 8-1-2-125 and is a public utility as defined by Ind. Code § 8-1-2-1(a). The Commission has authority to approve Petitioner's rates and charges for utility service under Ind. Code § 8-1-2-125 and its COSS and rate design under Ind. Code §§ 8-1-2-42, -125, and related statutes; therefore, the Commission has jurisdiction over BCW and the subject matter of this Cause. Petitioner's evidence demonstrates its customers were notified of the Verified Petition initiating this Cause as required by 170 IAC 6-1-18(C).

2. **Petitioner's Characteristics.** BCW is a not-for-profit public water utility incorporated in the State of Indiana with its principal place of business located at 5130 North State Road 135, Morgantown, Indiana. BCW is owned by its members who are also customers. BCW was formed in the 1960s and is governed by a seven member Board of Directors. Petitioner provides water service to approximately 5,219 residential customers and 176 commercial and institutional customers in Brown, Bartholomew, Morgan, Monroe, and Johnson Counties. Nashville is BCW's only current wholesale customer. BCW produces and treats about 90% of its water, and Petitioner purchases the balance from Nashville, Citizens Water, and Jackson County Water.

3. **Relief Requested.** The Commission approved BCW's current rates and charges in Cause No. 44648 on November 18, 2015 (the "2015 Rate Order"). BCW requests authority to increase its rates and charges for water utility service to enable Petitioner to pay its reasonable and necessary expenses of operation, extensions and replacements ("E&R"), debt service, and other revenue requirements. BCW also requests Commission approval of a COSS and rate design to be incorporated into Petitioner's new schedule of rates and charges. Consistent with the Settlement Agreement, this Cause was bifurcated for hearing purposes, with Phase 1 limited to Petitioner's revenue requirements and appropriate interim rate relief.

4. **Test Year and Rate Base Cut-off.** The test year for determining Petitioner's actual and pro forma operating revenues, expenses, and operating income under present and proposed rates is the 12 months ended June 30, 2018, adjusted for changes that are fixed, known, and measurable for ratemaking purposes and will occur within 12 months following the end of the test year. We find this test year to be sufficiently representative of BCW's ongoing operations to use for ratemaking purposes.

5. **Petitioner's Case-in-Chief.**

A. **Ben Phillips.** Mr. Phillips, who serves as the President of BCW's Board of Directors, generally described BCW's system, operations, indebtedness, and the Federal Litigation that BCW initiated. He stated that BCW's present rates and charges do not yield sufficient revenue for BCW to pay all the legal and necessary expenses incident to operating the utility. Mr. Phillips testified these rates and charges also provide insufficient funds for sinking funds and reserve for the liquidation of bonds, working capital, E&R, and reasonably adequate service to BCW's

customers. According to Mr. Phillips, BCW has grown well beyond its original system design and earlier experienced growing pains as Petitioner transitioned from a small “Mom and Pop” operation to more than 5,000 customers. Petitioner’s Ex. 1 at p. 4. Mr. Phillips testified that BCW has, however, made that transition and now has a very capable professional management team. He stated BCW’s Board believes Petitioner has transitioned to a viable utility enterprise and is well positioned to resolve its historic issues.

Mr. Phillips testified that BCW provides water service to its members in rural areas of Brown, Johnson, Monroe, Bartholomew, and Morgan Counties. He stated that in 2010, BCW became indebted to the Rural Development Agency of the United States Department of Agriculture (“RD”) in the amount of \$5,380,700, with the indebtedness due the RD as of December 31, 2018, being \$4,798,305.

Mr. Phillips stated BCW endeavors to assure all customer classes are treated fairly and that no customer class subsidizes the other; consequently, BCW’s Board determined a COSS should be conducted in preparation for this rate proceeding to determine whether BCW’s rate structure is consistent with this goal. He testified that BCW’s proposed rate increase and new schedule of water rates and charges are based on the rate design resulting from the COSS the Board authorized Mr. Foley to conduct.

Mr. Phillips also testified about the Federal Litigation BCW initiated against Nashville in June 2017. He testified that BCW serves the area surrounding Nashville, including an area recently annexed and known as Firecracker Hill, with the exception of a corridor along Indiana State Road 45 West to Belmont, Indiana. According to Mr. Phillips, BCW’s service essentially surrounds Nashville, except for the portions of Brown County outside Nashville that Southwestern Bartholomew Water Corporation serves. Mr. Phillips stated BCW has pipes in the ground in the Firecracker Hill area, has the ability to serve this area and the businesses to be located there, and that BCW’s service area includes Firecracker Hill. He stated that in March 2017 he informed Nashville’s Town Manager and Utility Manager that Firecracker Hill is part of BCW’s service area, and BCW’s Board directed its attorney to provide notice to Nashville of BCW’s federal rights and obligations under 7 U.S.C. § 1926(b) involving Firecracker Hill. Notwithstanding this notice, Mr. Phillips testified that on or about April 20, 2017, Nashville annexed Firecracker Hill, and he received a copy of this annexation ordinance. Mr. Phillips stated he subsequently asked Nashville to provide a copy of its agreement for water service to this area with Big Woods Brewing Company, Quaff On! Brewing Company, and/or Hard Truth Distilling Company. A few days later, Nashville provided a copy of a “Sewer and Water Connection Agreement” Nashville had entered into with Red Truck, LLC.

Mr. Phillips testified that on June 12, 2017, he observed Nashville employees preparing to connect water pipes in the Firecracker Hill area to Nashville’s system, and on June 20, 2017, BCW filed the Federal Litigation seeking a ruling that 7 U.S.C. § 1926(b) prohibits Nashville from encroaching upon BCW’s service area, specifically, prohibiting Nashville from providing water service to Firecracker Hill. He stated BCW sought to permanently enjoin Nashville from providing

service in BCW's service area and to recover BCW's attorney fees and costs related to the Federal Litigation.<sup>2</sup> Mr. Phillips testified it is important BCW serve the Firecracker Hill area.

Mr. Phillips testified that BCW is proposing to recover the costs of the Federal Litigation as part of its revenue requirement in this Cause, recovering these costs through an amortization which Mr. Foley details in his testimony and exhibits.<sup>3</sup>

**B. Ben Foley.** Mr. Foley testified that he determined BCW's proper level of rate relief for this Cause, and he explained the forecasted revenue requirements needed to cover Petitioner's estimated operating expenses, E&R funding, and repayment of long-term debt. Based on Mr. Foley's rate study, BCW needs an increase in annual operating revenues of \$301,930, representing an overall rate increase of 9.21%. In accordance with the results of his COSS, Mr. Foley testified the impact to each customer class required to achieve the necessary revenue is a decrease of 14.24% to the residential class, an increase of 35.56% to the small commercial/industrial class, and an increase of 154.08% to the wholesale class.

In describing his financial rate study, Mr. Foley explained the method and assumptions he used to develop the forecasted information. He also provided the rationale for his revenue and expense adjustments. These adjustments included eliminating non-recurring items of revenue and expense, normalizing metered revenues, normalizing the income BCW receives from two regional sewer districts, reclassifying test year volumetric wholesale revenue, normalizing test year expenses for purchased power to include additional power associated with increased customers, normalizing expenses for chemical and water testing, incorporating the anticipated increase in salaries and wages for the twelve-month period ending June 30, 2019, and reducing interest expense to the amount paid or expected to be paid during the forecast period.

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<sup>2</sup> In response to questions at the hearing from the Presiding Officers, Mr. Phillips acknowledged knowing that Nashville filed a petition with the Commission in Cause No. 44944 in May 2017—before the Federal Litigation was filed—requesting the Commission approve a regulatory ordinance Nashville's Town Council passed asserting jurisdiction to exclusively provide water service to certain areas within four miles of Nashville's corporate boundaries. This area encompassed Firecracker Hill. Mr. Phillips affirmed that BCW's Board of Directors knew about Cause No. 44944, but he believed state law does not trump federal law, so he saw no reason for BCW to intervene or otherwise take action in Cause No. 44944. In the 44944 Order, the regulatory ordinance was approved. No party in that proceeding challenged the legality of this ordinance, the exclusivity the ordinance afforded Nashville to furnish water service prospectively within the defined water service area, the evidence that BCW had no facilities or customers within the subject water service area, the testimony that BCW's closest water line to the subject area is about 430 feet away and too small to provide fire flows to the area, or the testimony that historically, only Nashville had provided water service within the water service area at issue, with Nashville claiming to have served customers throughout most of the proposed area for over 40 years. 44944 Order at p. 7. In addition, no request for a stay or similar relief was filed in Cause No. 44944, and no one asserted 7 U.S.C. § 1926(b) precluded the Commission from approving Nashville's regulatory ordinance.

<sup>3</sup> Per the 2015 Rate Order, BCW and the OUCC agreed in that proceeding that an average of Petitioner's legal expenses over several years better represented BCW's ongoing legal expense; consequently, they agreed to a four-year average to establish a pro forma annual legal expense for Petitioner of \$85,892. 2015 Rate Order at p. 12. In response to questions from the Presiding Officers at the evidentiary hearing in this Cause, Mr. Phillips acknowledged BCW in 2016 through 2018, based on its Annual Reports, paid approximately \$747,399 in legal fees, of which he estimated at least 50% of this total was attributable to the Federal Litigation. Tr. at p. A-12. Under the Settlement Agreement, Petitioner's inclusion of \$42,383 in its operating expenses attributable to amortization of the Federal Litigation costs was removed. Public's Exhibit No. 1 at pp. 6-7.

Mr. Foley explained that in accordance with the 2015 Rate Order, BCW has been reserving funds for large maintenance expenses not expected to occur within the forecast period. He testified this includes maintenance for water storage facilities, wells, and high service pumps, and he stated a portion of this expense is included in Petitioner's source of supply expenses for the test year with additional required reserves included on the forecasted schedule of cash flows and revenue requirements and required increase in rates and charges. Petitioner's Ex. 4A at p. 28.

Mr. Foley testified that BCW included a five-year E&R program in its revenue requirements. Its annual requirement of \$363,237 is based on average annual expenditures over the term of this program. Additional detail and testimony regarding the E&R program was provided by BCW witness Baker.

Mr. Foley echoed Mr. Phillips' testimony in stating BCW has outstanding long-term debt from RD. Specifically, BCW borrowed \$5,380,700 from RD in 2010 at a rate of three percent with a 40-year term. He testified annual debt service on this loan, including principal and interest, is \$234,397. In addition, BCW is required to fund a related debt service reserve account. Mr. Foley testified this amounts to \$234,400 and is to be funded over ten years. He stated that due to unexpected expenses and cash flow shortages, BCW received permission in November 2017 from RD to use some of the accumulated debt service reserve to pay its operating expenses. He stated BCW continues to make the required monthly contribution of \$1,954 and will reimburse the debt service reserve once normal cash flow is restored. In addition to its RD debt, Mr. Foley testified that in 2015, BCW borrowed \$8,113,000 from the Indiana Finance Authority and the State's Drinking Water State Revolving Fund ("SRF") Program at a rate of two percent with a 20-year term. He testified that associated maximum annual debt service is \$487,292, which includes principal and interest, and BCW is required to fund a debt service reserve account equal to the maximum annual debt service. For the SRF loan, Mr. Foley testified this amounts to \$487,292 to be funded over five years or annual funding of \$97,458. For the RD and the SRF loans, Petitioner's total maximum annual debt service is \$721,687.

Mr. Foley testified he included additional working capital of \$1,489 in Petitioner's revenue requirements based on the 45-day methodology.

Mr. Foley stated that he prepared a COSS at BCW's request as Petitioner had never done a COSS and had become concerned whether any customer class is being subsidized by other customer classes. Because the appropriate rate design has been deferred to Phase 2 of this Cause, we decline to summarize Mr. Foley's COSS and rate design testimony at this juncture.

**C. Lori A. Young.** Ms. Young explained that the purpose of her testimony was to describe: (i) BCW's existing system; (ii) the water system infrastructure E&R needs for BCW's five-year E&R plan; and (iii) the engineering analysis provided for the COSS. She sponsored exhibits showing BCW's service area map, cost estimates for identified E&R projects, the BCW water transmission main inventory, and cost calculations for the water transmission mains.

Ms. Young explained that BCW has developed a five-year E&R plan. She reviewed the components of this plan, including Petitioner's ongoing need for replacements in its distribution system. The proposed E&R plan includes replacing three pressure reducing valves with new units that have the added feature of metering flow. Ms. Young testified that she worked with BCW to identify the water main replacement priorities and develop the preliminary cost estimates. She also

assisted with developing the cost estimates for proposed valve, hydrant, and service line replacements. Ms. Young testified the E&R projects and purchases detailed in Mr. Baker's E&R breakdown are necessary for BCW to continue to provide reasonably adequate service, and the cost estimates are reasonable.

Ms. Young explained her study of BCW's lost water. Based on her review of BCW's lost water for the past three years (2016-2018), Ms. Young testified a relationship was identified between water loss and BCW's main and service line leak repairs. More specifically, she stated that over the three years studied, months with fewer leak repairs tended to have increased lost water. Ms. Young testified an historical rule of thumb for acceptable water loss has been 15%, but while 15% may be a reasonable benchmark for cities and small towns with a high density of water customers and a reasonably constant pressure range, BCW's system is significantly different and should not be compared to that standard. Ms. Young testified an aggressive lost water goal for BCW would be 20% unaccounted for lost water and 5% accounted for lost water, with total lost water of 25% being a significant reduction from the 35% average water loss in 2018. Ms. Young opined that BCW's lost water can be substantially reduced, and she identified steps she anticipates BCW will undertake to achieve this objective.

Ms. Young testified she had reviewed the accounting report and COSS that Mr. Foley filed, and she agrees with the capacity allocation factors he determined. She stated it is her understanding the capacity factors were developed based on BCW's documented flow data, assumptions based on that data, and American Water Works Association ("AWWA") guidelines. Ms. Young stated BCW has actual meter data for maximum day and maximum hour wholesale usage by Nashville, and based on this data, the wholesale maximum day demand was 1.42 times the maximum month average day for wholesale. She testified that BCW does not have hourly usage information for other classes, so Mr. Foley applied the 1.42 factor to the maximum month average day for residential and small commercial classes. From Ms. Young's perspective, this approach is reasonable given the lack of actual hourly data available for those classes and the likely similarity in usage characteristics since Nashville has predominantly residential and small commercial users.

Ms. Young described BCW's water supply system and explained BCW's total system water sales, compared with total water sales to Nashville. According to Ms. Young, Nashville purchased an average of 388,827 gallons of water per day from BCW in 2017, which accounted for approximately 39% of BCW's total 2017 water sales. Ms. Young testified that BCW, in turn, buys back water from Nashville due to water main locations around Nashville and service areas. She testified BCW also purchases water from Citizens Energy Group and Jackson County Water Utility, Inc.

Ms. Young testified that BCW's water distribution system was initially constructed around 1971, put into service in 1972, and has expanded over the past 47 years. She stated that today, the overall distribution system is comprised of approximately 395 miles of water main ranging in size from one inch to 14 inches in diameter. Ms. Young testified that 420,600 linear feet (79.7 miles) of BCW's system piping are transmission mains in that this pipe is eight inches in diameter or larger. According to Ms. Young, while BCW's distribution system is used to serve Nashville, the costs related to the distribution system were not allocated to Nashville under the COSS because water produced from BCW's water treatment plant and wells may serve Nashville, but the water

BCW delivers to Nashville can also be sourced from BCW's connection with Citizens Energy Group.

**D. Darrell Baker.** Mr. Baker, BCW's Operation/Field Service Manager, testified that BCW is owned by its members who are also its customers. He stated BCW provides water utility service to approximately 5,219 residential customers and 176 commercial and institutional customers in Brown, Morgan, Monroe, Bartholomew, and Johnson Counties, with the majority of its customers located in Brown County. Mr. Baker stated BCW produces and treats about 90% of its water and purchases the balance.

Mr. Baker testified that in the 2015 Rate Order, BCW was authorized to incur long-term debt to finance a capital improvement program ("CIP"). He stated BCW incurred the authorized long-term debt, and the CIP was substantially completed in 2017.

Mr. Baker testified that in this Cause, BCW is proposing a revenue requirement for E&R that is not based on its historical E&R spending because Petitioner's historic E&R spending is not reflective of BCW's ongoing E&R needs. Instead, BCW has studied its current and future E&R needs and, based on that research, has assembled a five-year E&R program. Mr. Baker identified and explained the components of this E&R program. These include replacing Petitioner's oldest pick-up truck and acquiring a mini-excavator, skid steer loader, a one ton dump truck, and a towed vacuum machine in order to make time-sensitive repairs, more efficiently schedule work, and save money on smaller jobs. He testified other improvements include installing a taller tower to improve communication between BCW's SCADA system and the storage tanks, water treatment plant, booster stations, and main office. As part of its five-year E&R program, BCW also proposes certain hydrant, valve, service line, and main replacements and the installation of certain master meters and improvements to its Spurgeon Booster Station. Mr. Baker testified BCW has been notified by its meter vendor that the manufacturer will not upgrade BCW's current meter reading system after 2019; consequently, BCW is planning to purchase new equipment and software that are compatible with BCW's system upgrades.

Mr. Baker testified that BCW's office computers, server, and field tablet computers are over five-years old, out of warranty, and cannot run the new software BCW needs, so Petitioner plans to gradually replace these over 2019 to 2023. BCW also plans to continue replacing at least ten percent (540) of its meters each year, consistent with the number of meters Petitioner has annually replaced the past several years. Mr. Baker stated BCW has a number of older radio read meters which have begun to fail at the rate of 150 to 200 per year. He explained that when an old radio read meter fails to transmit a reading, the result is time consuming and expensive. To replace the failing radio read and remaining manual read meters, BCW proposes to temporarily replace 685 meters annually during the first three years of its E&R program. BCW will resume replacing 540 meters per year in years four and five.

Mr. Baker also testified concerning several office building replacement items and office equipment replacements BCW is proposing. He stated BCW's office building has developed serious foundation and floor issues, with the floor cracking and sinking. Mr. Baker stated the floor and foundation damage are believed to be caused by sub-surface water intrusion, with the floor cracks causing areas of the building to be damp. Mr. Baker testified the cost of critical repairs to

the foundation, floor, and stone veneer is \$26,338, for an annual requirement over 15 years of \$1,756. Mr. Baker testified the front parking lot where BCW's customers typically park now needs resurfacing. In addition, he stated that because BCW's employees park in a gravel lot, this results in dirt and mud being tracked into Petitioner's office building, necessitating more cleaning and leading to premature deterioration of the office floor coverings; consequently, BCW proposes to resurface the front parking lot and pave the employee lot at a total cost of \$43,145, for an annual requirement over five years of \$8,629. Mr. Baker also testified that BCW's office is located in a rural area and is subject to power outages that disrupt office functions such as telephones, computers, building lighting, and heating and cooling. A back-up generator is included in BCW's E&R plan at a cost of \$17,904. This generator is expected to have a ten-year useful life, so BCW is proposing an annual E&R requirement of \$1,790 for the back-up generator.

Mr. Baker testified all of the acquisitions, extensions, and replacements set forth in BCW's E&R program are necessary for Petitioner to continue to provide reasonably adequate service, and he stated the associated costs set forth in BCW's E&R program are reasonable.

Mr. Baker testified he is familiar with the revenue and expense adjustments set forth in Mr. Foley's rate report as he provided Mr. Foley with the factual information supporting these adjustments, and he concurs with the adjustments shown. Mr. Baker stated the expense and amortized cost items included in Mr. Foley's adjustments and proposed revenue requirement are necessary for BCW to continue to provide reasonably adequate service, and the amounts set forth in Mr. Foley's adjustments and revenue requirement are reasonable.

**6. Settlement Agreement and Testimony.** The Parties entered into the Settlement Agreement, to be operative in Phase 1 of this Cause, to resolve Petitioner's rate relief request and establish Petitioner's new revenue requirements. Each of the Parties submitted settlement testimony supporting the Settlement Agreement.

**A. Ellen F. Masteller.** In her settlement testimony, Ms. Masteller, BCW's Office Manager, testified she is familiar with the Settlement Agreement, and it adequately and fairly provides for the current needs of BCW and its ratepayers. She further stated the Settlement Agreement provides a reasonable rate for BCW's ratepayers.<sup>4</sup>

Ms. Masteller also testified that Petitioner's customers were notified of BCW's request for rate relief as required by 170 IAC 6-1-18(C). She stated a notice advising BCW's customers of the filing of the Verified Petition initiating this Cause was included in the regular monthly billing mailed to customers on April 17, 2019.

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<sup>4</sup> The summary above reflects the extent of BCW's testimony supporting the terms of the Settlement Agreement. Clearly, these brief conclusions do not explain why the Settlement Agreement's terms are in the public interest or provide sufficient probative evidence upon which to approve this agreement. Accordingly, but for the settlement testimony the OUCC filed, as discussed below, there is insufficient evidence to approve its terms. While we recognize the Settlement Agreement resolves only Phase I, we "remind the parties that their success in obtaining approval of any Settlement Agreement, even an interim request on less than all of the issues, is dependent on the provision of adequate evidence and support for the agreement." *Indiana Michigan Power Co.*, Cause No. 44033 (IURC February 22, 2012) at p. 6. Success in obtaining approval of a settlement agreement is dependent upon providing adequate evidence and support for the agreement, *Indiana Michigan Power Co.*, Cause Nos. 43992 S1 and 43992 ECCR 1 (IURC May 23, 2012) at p. 25, which support BCW did not itself provide in this Cause.

**B. Jane Gore.** Ms. Gore, Nashville's Town Council President, provided settlement testimony on Nashville's behalf supporting the Settlement Agreement. She testified the Parties agreed to bifurcate the revenue requirement issues from the rate design and COSS issues with the revenue requirement issues being considered in Phase 1 and the rate design/COSS issues to be considered in Phase 2. She stated the Parties agreed to bifurcate these issues because this case is occurring simultaneously with the Federal Litigation between BCW and Nashville. Ms. Gore testified Nashville and BCW have been engaged for some time in settlement negotiations related to the Federal Litigation, and if those negotiations are successful, the resulting settlement could significantly impact the issues in this proceeding. She testified that Nashville understands BCW needs additional revenue to continue to operate and maintain its utility system in an efficient manner and to provide adequate service to its customers. With this need in mind, she stated the Parties reached agreement on a \$133,239 revenue requirement increase to be applied in Phase 1 across-the-board.

Ms. Gore explained that Nashville and the OUCC will prefile Phase 2 testimony on BCW's rate design issues by November 12, 2019. Their Phase 2 testimony will apply the Phase 1 approved revenue increase unless BCW and Nashville reach a settlement in the Federal Litigation before November 12, 2019, that may require Commission approval and/or a modification of BCW's rates and charges. In that event, the Parties will notify the Commission of the settlement within seven days and request an attorneys' conference to discuss the procedural issues related to any necessary Commission approvals.

Ms. Gore testified that in reaching the settlement, the Parties engaged in arms-length negotiation of the revenue requirement issue and exchanged data and accounting schedules to arrive at the agreed revenue requirement increase. She stated the Parties understood BCW's need for additional revenue to effectively and efficiently operate its water utility, and the Settlement Agreement provides BCW with its needed revenue increase while affording the Parties additional time to continue negotiating a settlement of the Federal Litigation that could render the rate design and COSS issues moot. In her opinion, the Settlement Agreement is in the public interest, and its terms reasonably resolve the issues raised upon Petitioner's increased revenue requirement. Ms. Gore recommended the Commission approve the Settlement Agreement.

**C. Carla F. Sullivan.** Ms. Sullivan, a Utility Analyst II for the OUCC, provided the most extensive testimony supporting the Settlement Agreement. In her testimony, she presented the Parties' agreed revenue requirement and discussed the agreed revenue and operating expense adjustments. As Ms. Sullivan noted, the settlement does not resolve all the issues in this proceeding since the Parties agreed to bifurcate this case by separating Petitioner's revenue request (Phase 1) from BCW's rate design request (Phase 2). Ms. Sullivan sponsored the following schedules:

Schedule 1 - Comparison of Petitioner's and Settlement Revenue Requirement and Reconciliation of Net Operating Income Statement Adjustments

Schedule 2 - Comparative Balance Sheet as of June 30, 2018, and December 31, 2016, and 2017

Schedule 3 - Comparative Income Statement for the 12-months ended June 30, 2018, and December 31, 2016, and 2017

Schedule 4 - Pro Forma Net Operating Income Statement

Schedule 5 - Settlement Revenue Adjustments

Schedule 6 - Settlement Expense Adjustments

Schedule 7 - Working Capital Computation

Ms. Sullivan testified the Parties agreed Petitioner should be authorized to increase its rates and charges for water service to reflect a total net revenue requirement of \$3,610,557. She stated this results in an increase of 3.93% on an across-the-board basis or \$133,239 over Petitioner's current revenue at existing rates.

Ms. Sullivan testified that Petitioner proposed pro forma operating revenues at present rates of \$3,393,416, a decrease of \$179,380 to test year operating revenues of \$3,572,796. Through negotiations, she stated the Parties agreed to pro forma operating revenues at present rates of \$3,477,491, a decrease of \$95,305 to test year operating revenues. She testified the Parties compromised on post-test year customer growth, the 2015 Rate Order true-up, and a sales tax payable adjustment. In addition, for purposes of the post-test year customer growth adjustment, the Parties agreed to use BCW's actual growth between July 1, 2018, and May 31, 2019, which yielded a \$30,171 increase to Petitioner's operating revenues.

Ms. Sullivan testified that under the 2015 Rate Order, BCW was required to true-up its rates in July 2019 to reflect actual debt service costs, but after filing this Cause, BCW requested the debt service true-up not be implemented and the actual debt service costs be reflected in this rate order. Ms. Sullivan testified the OUCC accepted Petitioner's proposal and agreed the adjustment to the debt service revenue requirement should be included in the rates set in this proceeding; therefore, no revenue adjustment is necessary as BCW never reduced its rates.

Ms. Sullivan also explained the agreed sales tax payable adjustment. She stated that in its historical adjustment related to sales tax, Petitioner proposed an increase to sales tax payable and a decrease to water sales of \$6,193. Ms. Sullivan stated this adjustment was intended to record the payment of test year sales taxes for June 2018; however, certain revenues and expenses are booked on a one month lag, including water sales and associated sales taxes. Because BCW's test year includes water sales for June 2017 through May 2018, she testified the revenues and associated taxes for June 2018 should not be included in the test year. She stated test year water sales did not include sales taxes, so no reduction is necessary.

With respect to operating expenses, Ms. Sullivan stated Petitioner proposed pro forma operating expense of \$2,416,916, a decrease of \$27,841 to test year operating expense of \$2,444,757, but when the maintenance expenses Petitioner included in its proposed "Additional Maintenance Reserve" revenue requirement were included, this yielded a proposed pro forma operating expense of \$2,494,778 ( $\$2,416,916 + \$77,862$ ) or an increase of \$50,021 to test year

operating expense. Through negotiations, the Parties agreed upon pro forma operating expense at present rates of \$2,419,624, representing a decrease of \$25,133 to test year operating expense. Ms. Sullivan testified the Parties agreed to adjustments for additional capital cost reclassification, non-recurring expenses, periodic maintenance expense, system delivery adjustment, billing service expense, additional 2017 accrual reversal, elimination of 2016 accrual reversal, elimination of overstated operating expenses, liability insurance expense, the IURC fee, and Federal Litigation costs. She testified the Table below presents a comparison of Petitioner's proposed operating expense adjustments and the Parties' agreed adjustments:

	Petitioner	Settlement	Settlement More (Less)
Reclassification of Capital Cost	\$ -	\$ (13,296)	\$ (13,296)
Additional Non-Recurring Expenses	-	(6,667)	(6,667)
Periodic Maintenance Expense	4,000	56,112	52,112
System Delivery Adjustment	3,353	4,811	1,458
Billing Services Expense	291	262	(29)
Additional 2017 Accrual Reversal	-	(26,468)	(26,468)
Eliminate 2016 Accrual Reversal	-	67,289	67,289
Eliminate Overstated Operating Expenses	-	(37,774)	(37,774)
Liability Insurance Expense	8,748	17,100	8,352
IURC Fee	280	379	99
Amortization of Federal Litigation Costs	42,368	-	(42,368)
Accepted Petitioner Adjustments	(86,881)	(86,881)	-
Total Operating Expense Adjustments	\$ (27,841)	\$ (25,133)	\$ 2,708

Ms. Sullivan stated several expense reclassifications were also necessary to properly reflect test year expenses and capital costs; therefore, the settlement reclassifies \$13,296 of additional operating expenses to utility plant in service. She testified these costs were incorrectly expensed during the test year and include \$5,496 in engineering fees, \$500 to install a service line for a new customer connection, and \$7,300 to replace 530 feet of main. Because these costs were incurred on capital projects, she stated they should be capitalized, not expensed.

Ms. Sullivan testified the settlement eliminated \$6,667 of contractor labor costs incurred during the test year for emergency repairs because BCW recently purchased equipment to perform certain emergency repairs with its personnel instead of contractors. The Parties also agreed to a periodic maintenance expense adjustment of \$56,112. She stated this adjustment includes funds for filter media, tank painting, well inspections and cleaning, and pump maintenance. Ms. Sullivan testified the Parties' settlement on periodic maintenance expense is a fair compromise that benefits ratepayers.

Ms. Sullivan stated the Parties agreed the test year well inspection invoice Petitioner provided reflected the cost to inspect three wells as opposed to one well as Petitioner had originally assumed; therefore, the Parties agreed the annual cost of inspecting three wells is \$1,250.

Ms. Sullivan testified that under the 2015 Rate Order, BCW is required to place certain periodic maintenance expense funds in a restricted account to only be used to pay specific

maintenance costs or, when absolutely necessary, to pay debt service. She confirmed that the Parties agreed Petitioner shall continue to deposit these maintenance funds into the restricted account. Ms. Sullivan testified the Parties also agreed BCW will provide an annual reconciliation of this restricted account as part of Petitioner's IURC Annual Report showing the funds deposited and a list of the expenses paid from the restricted maintenance account.

Ms. Sullivan explained how the system delivery expense adjustments for customer growth were determined. She testified that first, the pro forma cost per thousand gallons for purchased power expense (\$0.3392) and chemical expense (\$0.4636) was calculated. The total increase in water sales volume (5,180.6755 additional gallons based on the agreed customer growth adjustments) was also determined. To then determine the increase in purchased power (\$1,757) and chemical expense (\$2,402), she stated the increase in water sales volume was multiplied by the cost per thousand gallons. Ms. Sullivan testified postage expense (\$551) was determined by multiplying the increased billings by the current postage rate (\$0.55). The increase in billing services expense due to customer growth (\$98) was determined by multiplying the increased billings by \$0.0975, the cost per billing before any price increase. In total, she stated the settlement reflects a \$4,808 increase in system delivery costs due to customer growth.

Ms. Sullivan testified that Petitioner outsources the printing of monthly service billings and, in addition to the increase attributable to growth, expects the cost for this service to increase four percent due to a test year price increase. Using the agreed projection of customer growth, she stated the billing service expense will increase by \$262. She also explained the agreed reversal of additional 2017 year-end accruals. Ms. Sullivan testified that Petitioner made an adjustment to reverse the main 2017 year-end accruals, but there was a second set of 2017 accruals recorded that was not reversed. This transaction accrued \$26,468 of operating expenses. She stated the settlement eliminates this additional 2017 accrual to correctly reflect these expenses in Petitioner's pro forma operating expenses.

Ms. Sullivan explained an additional agreed adjustment eliminating the 2016 year-end accrual reversal recorded in December 2017. The 2016 accruals occurred prior to the beginning of the test year and, therefore, caused test year operating expenses to be understated. The settlement eliminates \$67,289 of 2016 year-end accrual reversals, increasing test year operating expenses. Ms. Sullivan stated the Parties also agreed to eliminate \$37,774 of overstated expenses, including adjustments to purchased water, chemicals, office equipment, maintenance, monitoring fees, and directors' fees. According to Ms. Sullivan, several test year operating expenses included more than 12 months of expense and, therefore, were overstated.

Ms. Sullivan testified the Parties also agreed to adjust the IURC fee by using the current IURC fee of 0.1296408%, effective July 1, 2019, to calculate the IURC fee adjustment. She testified this yielded an adjustment of \$379 based on the agreed pro forma operating revenues.

She stated the Settling Parties also agreed to a \$17,100 increase to test year liability insurance, primarily because Petitioner's workers' compensation insurance increased from \$9,107 to \$19,288 per year.

Ms. Sullivan testified that, ultimately, the Parties agreed no amortization of BCW’s Federal Litigation costs will be included in Petitioner’s revenue requirement. The Parties also agreed to E&R of \$357,534, a reduction of \$5,703 from Petitioner’s proposed E&R of \$363,237. In arriving at this amount, the Parties agreed to base E&R on an historical average of the cash-funded E&R that Petitioner incurred during the prior three years.

Ms. Sullivan testified that using the FERC 45-day method, Petitioner’s working capital need is \$238,074. She stated that as of June 30, 2018, Petitioner had current available cash of \$251,039; therefore, the Parties agreed no working capital revenue requirement is needed.

Ms. Sullivan stated the Parties agreed on a debt service revenue requirement of \$721,156 based on Petitioner’s average debt service payments for the next five years and the life of the rates being set in this case. Ms. Sullivan’s calculation of the five-year average debt service revenue requirement is shown below:

	RD 91-01	RD 91-02	SRF	Total
2020	\$ 217,632	\$ 16,764	\$ 486,412	\$ 720,808
2021	217,632	16,764	486,332	720,728
2022	217,632	16,764	487,112	721,508
2023	217,632	16,764	486,732	721,128
2024	217,632	16,764	487,212	721,608
Total Debt Service	\$ 1,088,160	\$ 83,820	\$ 2,433,800	\$ 3,605,780
Divided by: Five Years				5
Average Debt Service				\$ 721,156

Ms. Sullivan stated the Parties also agreed to certain revenue requirement offsets totaling \$8,655. She noted this amount includes \$1,550 of farm ground rental income Petitioner will receive annually based upon two farm land leases executed in 2019.

Ms. Sullivan testified the Parties’ settlement is a fair, just, and reasonable resolution of the revenue requirement issues. From her perspective, the settlement represents a reasonable compromise that the Parties support as fair, reasonable, and beneficial to both BCW and its customers. Ms. Sullivan testified the Settlement Agreement is in the public interest because Petitioner will have sufficient funds to pay necessary operating expenses and make capital improvements, and BCW’s ratepayers will receive the benefit of lower rates. She testified the Parties also value the certainty and speed of implementing negotiated outcomes like this settlement.

**8. Docket Entry Information Request.** On October 18, 2019, a docket entry was issued (the “October Docket Entry”) eliciting information about the balance in BCW’s debt service reserve accounts at year-end 2018 and September 30, 2019, the extent to which BCW borrowed from its accumulated debt service reserve, and the expenditures BCW made from restricted asset accounts for tank and well maintenance since January 1, 2016. On October 23, 2019, BCW filed its responses to the October Docket Entry with these responses subsequently admitted into the record at the hearing. Based on his hearing testimony, Petitioner’s witness Foley took the lead in preparing BCW’s responses.

In responding to the October Docket Entry, BCW provided the account balances for Petitioner's SRF and RD debt service reserve accounts. Mr. Foley also computed—and BCW provided—the deficits in these accounts as of December 31, 2018, and September 30, 2019. Using the balance in the debt service reserve accounts as of September 30, 2019, and the \$120,898 in debt service reserve included in BCW's agreed revenue requirement, Petitioner provided a chart demonstrating the extent of the deficit (or surplus) in this account after five years. Based on this chart and Mr. Foley's responses to questions at the hearing, the SRF debt service reserve account will be fully funded effective March 2021, so Petitioner will over-collect debt service reserve after March 2021 under the Parties' proposed revenue requirements, if approved. Copies of BCW's loan documents were included in the responses to the October Docket Entry.

Petitioner also clarified the extent to which BCW borrowed funds from its accumulated debt service reserve to pay operating expenses. Based on BCW's responses to the October Docket Entry, BCW withdrew \$100,000 from the RD debt service reserve account during 2018, but BCW continued to make the scheduled monthly transfers. Accordingly, the funds BCW withdrew extended the RD debt service reserve funding schedule to November 2024. Petitioner provided a copy of a letter from RD dated November 13, 2017, permitting BCW to use the debt service reserve account funds in this manner because Petitioner's September 2017 financial statements showed BCW had insufficient funds to meet its debt payments and have cash available for operating. The October Docket Entry also included a question inquiring whether, in determining the debt service reserve requirement in this Cause, Petitioner deducted the actual balance in the debt service reserve account from the debt service reserve requirement. In its response, Petitioner clarified its debt service reserve requirement in this Cause was determined by the loan documents and not the debt service reserve account balance.

Also included in the October Docket Entry was a request for an accounting showing deposits into and all expenditures from Petitioner's two restricted accounts for tank and well maintenance from January 1, 2016, through June 30, 2019. An accounting for both the well/pump maintenance account and the tank maintenance account from January 1, 2016, to September 30, 2019, was included in BCW's responses to the October Docket Entry. The accounting detail showed a check for \$120,000 was written from the restricted tank maintenance account on March 2, 2016, for a bond payoff, and a wire transfer of \$100,540 for a land purchase was made from this account on July 26, 2018, with the wire transfer funds appearing to be reimbursed to the account on September 20, 2018.

**9. Presiding Officers' Questions.** Although the Parties waived cross-examination of all witnesses at the evidentiary hearing, the Presiding Officers posed questions to Petitioner's witnesses Phillips and Foley.

**A. Questioning of Mr. Phillips.** Mr. Phillips was primarily questioned about the Federal Litigation, particularly the magnitude of BCW's legal fees associated with that litigation and the disparity between the dollars expended and the revenue projected from the disputed territory.

To facilitate the Presiding Officers' questions, administrative notice was taken of the financial section from BCW's recent Annual Reports filed with the Commission, and these were

admitted without objection. Commissioner Ober inquired of Mr. Phillips about the amount of legal expenses BCW incurred from 2016 through 2018 based on Petitioner's 2016, 2017, and 2018 Annual Reports. Mr. Phillips agreed that BCW's payments to counsel over these three years totaled \$747,399. He estimated at least 50% of that amount was attributable to the Federal Litigation.

Commissioner Ober also posed questions about the annual revenue BCW expects from Hard Truth Hills ("HTH") distillery if Petitioner serves Firecracker Hill, i.e., the disputed territory. Mr. Phillips testified he was uncertain how much this revenue will be because there is no way of knowing how HTH is going to operate at this site, but he agreed with Commissioner Ober that HTH's historic usage at its facility within this area has been about 130,000 gallons per month. Mr. Phillips concurred that if BCW's current tariff was applied to that usage, HTH's monthly bill would be approximately \$849 which, when annualized, equals about \$10,186. But, because BCW now sells water at wholesale to Nashville for Nashville to serve this customer, BCW's wholesale revenue would need to be deducted to determine BCW's increased revenue if it directly serves HTH. Based on BCW's wholesale rate, for 130,000 gallons per month, Petitioner receives approximately \$209.30 or about \$2,522.60 annualized, so if Petitioner serves HTH as a retail customer, Mr. Phillips concurred that based on HTH's historic usage, this would yield about \$7,700 of additional annual revenue.

In light of Mr. Phillips' testimony that Petitioner's legal fees through 2018 associated with the Federal Litigation are at least \$370,000, Mr. Phillips was asked how long it will take BCW to break even from HTH revenues. Mr. Phillips acknowledged it will take quite a while, but he testified BCW pursued the Federal Litigation because of the responsibility to the membership to protect BCW's territory and through counsel and education, he concluded Nashville was violating 7 U.S.C. § 1926(b) by serving HTH. According to Mr. Phillips, "[I]t took a lot of money to bring it [the Federal Litigation] to where it was, and we settled it, and I'm not happy with the way we settled it, but we still – sometimes you're fighting too much that you can't win. Sometimes for the customers it's best to resolve the case." Tr. at pp. A-15 and -16. When asked whether BCW pursued the Federal Litigation as a matter of principle, Mr. Phillips testified it was his responsibility to the membership to protect BCW's territory. Tr. at p. A-16.

The Presiding Officers also questioned Mr. Phillips about Nashville petitioning the Commission in May 2017 for approval of a regulatory ordinance under which Nashville exclusively serves the territory at issue in the Federal Litigation. Mr. Phillips acknowledged he knew about Nashville making this filing with the Commission (Cause No. 44944) before the Federal Litigation was initiated and that Petitioner's Board of Directors was also aware of that ongoing action. When asked why BCW did not intervene when Nashville sought the Commission's approval of the regulatory ordinance, Mr. Phillips testified that he didn't know, "other than the fact that it's my belief that the state doesn't trump the federal, and I don't know if I'll get in trouble, but it's – you know, you guys [the Commission] had no business in it or the Town of Nashville ha[d] no business trying to get you guys suckered in to trump the federal law is the way I look at it." Tr. at p. A-18. Mr. Phillips testified that he saw no reason to intervene. He also testified that to his knowledge, Petitioner's Board had not directed anyone to let the Commission know that BCW did not believe the Commission should get involved. He stated the Board of Directors believed they were going down the right path and, through advice of counsel, that BCW was protected under federal law. Tr. at p. A-19.

**B. Questioning of Mr. Foley.** Mr. Foley was asked several questions in follow up to Petitioner's responses to the October Docket Entry. Initially, he was referred to a Memo from RD dated November 8, 2017, that Petitioner produced regarding BCW restoring its debt service reserve balance and asked whether BCW had resumed making payments to restore the debt service reserve. Mr. Foley clarified that the sequence of BCW's monthly transfers required for RD debt service reserve never changed. He testified the required monthly transfer of \$1,954 continued throughout the process, but the RD debt service reserve has a deficit based on what the schedule originally required because of the borrowing RD approved from the reserve.

In response to questions from the Presiding Officers, Mr. Foley confirmed he was familiar with the restricted accounts required in the 2015 Rate Order and the Stipulation and Settlement Agreement (the "2015 Settlement") attached to and approved in the 2015 Rate Order. Mr. Foley testified BCW was required by the 2015 Settlement to make annual deposits to accounts that are restricted for tank inspection and maintenance and well pump and well maintenance. Mr. Foley was then asked about a March 2, 2016, check for \$120,000 written from the restricted tank maintenance account for a bond payoff and asked whether making the bond payoff from the restricted account was allowed under the 2015 Settlement. Mr. Foley stated the 2015 Settlement allowed funds in the restricted accounts to be used to pay debt service when due if other funds are not available for that payment, so the 2015 Settlement appears to approve paying bond charges. Mr. Foley noted, however, that he could not speak to the availability of funds when the bond payoff check was written in March 2016. He also testified he did not know whether Petitioner reported removing these funds from the restricted account to the Commission within 14 days as required under the 2015 Settlement. Mr. Foley was then asked about a July 26, 2018, wire transfer of \$100,540 from the same restricted account for a land purchase. He testified the land purchase withdrawal did not appear to be permitted under the 2015 Settlement.

Mr. Foley was also asked to review BCW's 2018 Annual Report filed with the Commission and direct the Presiding Officers to where the two restricted accounts were shown in that report. He testified the two restricted funds were included in the Working Funds shown on Page F-1(a) of the Annual Report. When asked why the accounts were reported as Working Funds as opposed to restricted accounts, Mr. Foley acknowledged this "differs from what the Commission would like to see," Tr. at p. A-30, and characterized this as an oversight from a preparation standpoint. He confirmed the restricted account funds are not being used as working capital and should be reported as some sort of special deposit.

Mr. Foley was also asked about BCW's debt service reserve balance and whether, if the proposed revenue requirement is approved, BCW will over-collect SRF debt service reserve after March 2021. He acknowledged Petitioner's last scheduled transfer for the SRF debt service reserve is to occur in March 2021; therefore, at that point this funding requirement decreases, and based on BCW's current circumstances, its need for debt service reserve funds will be less.

**10. Commission Discussion and Findings.** As the Commission has previously discussed, 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 Coalition 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. v. Public Service Co.*, 582 N.E.2d 330, 331 (Ind. 1991)). The Commission’s procedural rules require that settlements be supported by probative evidence. 170 IAC 1-1.1-17(d). Before the Commission can approve the Settlement Agreement, the Commission must determine whether the evidence in this Cause sufficiently supports the conclusion 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 Commission has before it substantial evidence from which to determine the reasonableness of the terms of the Settlement Agreement. While only BCW presented evidence supporting the relief Petitioner originally requested, the Parties subsequently agreed to bifurcate the proceeding, and BCW, Nashville, and the OUCC presented evidence demonstrating the reasonableness of the agreed revenue requirements. In supporting approval of the Settlement Agreement, OUCC witness Sullivan testified the Settlement Agreement represents a compromise the Parties support as fair, reasonable, and beneficial to Petitioner and to its customers. She further testified the Settlement Agreement is in the public interest because it will enable BCW to have sufficient funds to pay necessary operating expenses and make capital improvements while ratepayers will receive the benefit of lower rates. We find the Parties’ agreements are supported by the detail and reasoning set forth in their evidence, particularly the analysis Ms. Sullivan included in her settlement testimony upon the agreed operating revenue and expense adjustments. Based on the settlement testimony, we find the interim rate increase the Parties agreed upon as set forth in the Settlement Agreement provides Petitioner with sufficient revenue to pay its reasonable and necessary expenses and provide reliable water service to its customers consistent with Ind. Code § 8-1-2-125. Accordingly, we find the Settlement Agreement is reasonable, in the public interest, and is approved.

In addition, we specifically find:

**A. Bifurcating this Cause.** The Parties agreed to bifurcate this Cause by separating Petitioner’s revenue requirement request (Phase 1) from BCW’s rate design request (Phase 2). Such bifurcation is reasonable given the testimony recognizing BCW’s existing need for additional revenue to continue efficiently operating its water utility. *See* Nashville Ex. 1 at p. 4. We find the rates approved in Phase 1 will be interim rates, subject to being appropriately adjusted based on the rate design approved in Phase 2 and, potentially, the settlement reached in the Federal Litigation if presented in Phase 2.<sup>5</sup>

**B. Petitioner’s Rate Increase.**

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<sup>5</sup> The Verified Petition in this Cause has not been amended to include consideration and approval of any issues other than BCW’s rates and charges for water service, rate design, and new schedule of rates and charges. *See* Footnote 1.

**1. Petitioner's Test Year Operating Revenue.** Petitioner's adjusted test year operating revenue at present rates is \$3,477,491.

**2. Petitioner's Revenue Requirement.** The Parties agree Petitioner's adjusted pro forma revenue requirement is \$3,610,730 and is calculated as follows:

Operating Expenses	\$2,419,797
Extensions and Replacements	357,534
Working Capital	0
Debt Service	721,156
Debt Service Reserve	<u>120,898</u>
Total Revenue Requirements	3,619,385
Less: Interest Income	(7,105)
Farm Rental Income	<u>(1,550)</u>
Net Revenue Requirements	\$3,610,730

**3. Petitioner's Authorized Rates.** Petitioner's current rates and charges, which provide annual adjusted revenues of \$3,477,491, are insufficient to satisfy Petitioner's annual pro forma adjusted revenue requirement of \$3,610,730. Accordingly, Petitioner is authorized to increase its rates and charges for water service on an interim basis across-the-board to produce annual revenues of \$3,610,730, which is an increase of \$133,239 over annual adjusted present rate revenues of \$3,477,491.

**C. Restricted Accounts.** In the 2015 Rate Order, the Commission approved a Stipulation and Settlement Agreement ("2015 Settlement Agreement") that included the following agreement upon BCW's restricted accounts:

Petitioner shall create and maintain dedicated restricted accounts for funds collected for both Storage Tank Inspection and Maintenance, and Well and Well Pump Maintenance. Petitioner shall deposit all funds collected for those purposes into the appropriate account. Petitioner shall annually deposit no less than \$71,500 into the Storage Tank Inspection and Maintenance Account, and Petitioner shall set up and annually deposit no less than \$49,000 into the Well and Well Pump Maintenance Account. The funds in these accounts shall be restricted to use for the purposes intended, except, however, funds in these restricted accounts may be used to pay debt service when due if other funds are not available for the payment of debt service. Petitioner shall report annually, at the time of the filing of its IURC Annual Report, on the activities of these accounts to the IURC and the OUCC. However, if at any time Petitioner is required to invade either of these restricted accounts for the payment of debt service, Petitioner shall report such event to the IURC and the OUCC within fourteen (14) days of the event.

2015 Settlement Agreement at pp. 8-9. In the Settlement Agreement in this Cause, the Parties agreed to revise the annual amount BCW deposits into its well and well pump maintenance account

from \$49,000 to \$35,000, Settlement Agreement at p. 4; therefore, the periodic maintenance expenses OUCC witness Sullivan computed include well cleaning and pump maintenance expenses of \$35,000. Public's Ex. 1, Schedule 6 at p. 1. Based on the Settlement Agreement and Ms. Sullivan's settlement testimony, we find the annual amount Petitioner is prospectively required to deposit into the restricted well and well pump maintenance account established by the 2015 Settlement Agreement shall be modified to \$35,000. The annual amount Petitioner is required to deposit into the storage tank inspection and maintenance is not changed.

While BCW appears to have been depositing the approved amounts into the restricted accounts, it is questionable whether the restricted accounts have been maintained consistent with the 2015 Rate Order. At a minimum, as Mr. Foley acknowledged when questioned by the Presiding Officers, these amounts have not been reported in BCW's Annual Reports in the manner the Commission would like them reported. Tr. at p. A-30. We, therefore, find that BCW shall assure the two restricted accounts are separately established and maintained, and commencing with the Annual Report filed for 2019, BCW shall separately report the two restricted accounts in its Annual Report. In addition, consistent with OUCC witness Sullivan's settlement testimony, BCW shall provide an annual reconciliation for each restricted account to the Commission and the OUCC showing the funds deposited and the expenses paid from the account (including, at a minimum, the date, amount, and purpose) as part of BCW's Annual Report or simultaneous with filing its Annual Report. We caution BCW to assure Petitioner prospectively only withdraws funds from the restricted accounts as authorized in the 2015 Rate Order. Clearly, the withdrawal BCW made for a land purchase was not permitted. BCW's storage tanks are critical system components that require routine and potentially expensive maintenance, and the restricted account helps assure BCW has the funds to maintain these assets. While the evidence shows BCW repaid the land purchase funds withdrawn from the tank maintenance account, Petitioner's unauthorized withdrawal placed BCW at risk if an emergency tank repair had been needed in the interim.

Also, if prospectively BCW has insufficient funds to pay debt service except from restricted funds, Petitioner is reminded that BCW is obligated to advise the Commission and the OUCC in writing, within 14 days of withdrawing funds from either of the restricted accounts to pay debt service, of this withdrawal. There are no exceptions to providing this notice; therefore, Petitioner shall assure no withdrawals for debt service are made from the restricted accounts without the Commission and the OUCC being given timely written notice of such withdrawal and shall abide by the requirements associated with these accounts.

**D. BCW's Legal Expenses.** Although BCW's legal expenses associated with the Federal Litigation are not part of its revenue requirement under the Settlement Agreement, the Commission would be remiss to overlook the magnitude of these expenses from 2016 through 2018. These expenses increased exponentially. Based on Petitioner's Annual Reports and Mr. Phillips' testimony, BCW paid \$747,399 in legal fees these three years, of which at least one-half was incurred due to the Federal Litigation. Under the 2015 Rate Order, \$85,892 was included for legal expenses in BCW's annual revenue requirement, equating to \$257,676 over this three-year period. Petitioner, however, spent approximately \$116,000 more on routine legal matters during these three years than its revenue requirement covered, plus almost \$375,000 for the Federal Litigation initiated in June 2017. At the beginning of 2016, Petitioner had more than \$1.5 million in its cash accounts, but at the end of 2018, Petitioner's cash accounts totaled slightly more than

\$1.13 million. We suspect funds earmarked in previous cases for improvements and other operating expenses may have been syphoned away over the last couple years to meet legal expenses. This conclusion is buttressed by counsel's memorandum to RD dated November 8, 2017, listing the Federal Litigation among the "non-budgeted, non-anticipated items" that caused Petitioner to not have funds with which to make its loan payment. Petitioner's Exhibit No. 6.

While Mr. Phillips testified it was his responsibility to the membership to protect BCW's territory, Tr. at p. A-16, the Board of Directors also has a responsibility to be fiscally prudent with ratepayers' funds. Protecting BCW's service area should not come with a blank check or, generally, be disproportionate to the projected revenue at issue. From a cost/benefit analysis, based on Mr. Phillips' testimony, it is foreseeable that it may take more than 40 years to recoup the Federal Litigation expenses (not including those incurred after 2018) if BCW succeeds in serving the Firecracker Hill area. When protecting territory BCW believes is within its area, we note BCW did not seek to intervene or otherwise make any filings in Cause No. 44944 when Nashville sought approval in 2017 of a regulatory ordinance under which Nashville is the exclusive provider of water service to Firecracker Hill. If the critical issue driving BCW's actions is protecting its service territory, it is not apparent why Petitioner bypassed the opportunity to participate in the Commission proceeding before initiating the Federal Litigation. When asked about the Federal Litigation legal expenses, Mr. Phillips testified that "sometimes you're fighting too much that you can't win. Sometimes for the customers it's best to resolve the case." Tr. at pp. A-15-16. The Commission recognizes that in deciding to litigate the Board considered factors other than the costs associated with this decision, but the dollars expended should also be carefully evaluated in light of what's best for BCW's customers. Petitioner has fewer than 5,400 customers to bear these costs, the majority of whom are residential water users.

Based on the record, particularly Petitioner's decision to not participate in Cause No. 44944, the Commission finds it is questionable whether BCW's Board has appropriately weighed the financial cost of its territorial dispute and options. As the Commission has recognized, a "utility has a responsibility to efficiently manage and control its costs." *Water Service Company of Indiana*, Cause No. 44104, 2013 WL 1345652 (IURC March 27, 2013) at p. 25. Expenses a regulated utility seeks to recover as part of its revenue requirements must be reasonable and necessary. Because these legal fees have not been included in Petitioner's revenue requirements, we decline to opine upon their reasonableness, but BCW is encouraged to closely review and reel in its legal expenses, with the objective of assuring they do not adversely impact Petitioner's provision of water service.

**E. BCW's Non-Compliance with the 2015 Rate Order.** As discussed above, BCW's responses to the October Docket Entry show that on March 2, 2016, BCW used \$120,000 from its restricted tank maintenance account for a bond payoff. Mr. Foley stated this was a proper transaction if BCW had insufficient funds otherwise available from which to make this payment. The record is inconclusive as to what funds Petitioner then had available. On July 26, 2018, BCW used \$100,540 from its restricted tank maintenance account to purchase land, later reimbursing the restricted tank maintenance account. Mr. Foley confirmed that using the restricted funds for a land purchase is not permissible under the 2015 Settlement Agreement approved by the 2015 Rate Order. The Commission agrees, as discussed above, and cautions BCW to assure Petitioner only uses restricted funds as authorized in the 2015 Rate Order.

**F. SRF Debt Service Reserve Account Funding.** Based on OUCC witness Sullivan's settlement testimony and Mr. Foley's responses to questions from the Presiding Officers, if BCW's agreed rate request is approved, its SRF debt service reserve account will be fully funded with the March 2021 transfer; consequently, Petitioner will thereafter be over-collecting debt service reserve. Tr. at p. A-31. The Commission is concerned that the agreed rates will then provide BCW with funds for a revenue requirement element that no longer exists. To mitigate this result, we find BCW shall, on or before March 1, 2021, file a revised tariff with the Commission's Water/Wastewater Division under this Cause reflecting the rate impact of its SRF debt service reserve account being fully funded, with these rates and charges to be effective on or after April 1, 2021, unless both BCW and the OUCC also make a joint written filing with the Commission on or before March 1, 2021, affirming they are in agreement that BCW's financial needs at that time make it reasonable for BCW's rates to not be adjusted when its SFR debt service reserve account is fully funded and such joint filing is approved through a Docket Entry issued in this Cause. In the absence of such a Docket Entry or other relief before April 1, 2021, the revised tariff filed on or before March 1, 2021, shall be effective on April 1, 2021, subject to the Water/Wastewater Division being in agreement with the amounts shown.<sup>6</sup>

**11. Effect of Rate Increase on Residential Customers.** Based on the across-the-board rate increase being approved on an interim basis, the effect on residential customers (taking service from 5/8 inch meters) is:

- The Minimum Charge, which includes 2,000 gallons of usage, will increase by \$1.04 from \$26.60 to \$27.64;
- For 4,000 gallons of usage, the increase will be \$2.08, from \$53.20 to \$55.28; and,
- For 5,000 gallons of usage, the increase will be \$2.59, from \$66.07 to \$68.66.

**12. Use of Settlement Agreement.** The Parties agree 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 outside this Cause during Phase 2, 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).

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

1. The Settlement Agreement, a copy of which is attached, is approved.
2. Petitioner is authorized to increase its rates and charges for water service, on an interim across-the-board basis pending resolution of its rate design in Phase 2 of this Cause, to

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<sup>6</sup> In their agreed proposed order, the Parties proposed a true-up procedure. This true-up proposal was not, however, presented or supported during the hearing and is, therefore, outside the record for purposes of the Commission's consideration.

produce annual revenues of \$3,610,730, which is an increase of \$133,239 over annual adjusted present rate revenues of \$3,477,491.

3. The 2015 Rate Order is amended such that Petitioner shall prospectively annually deposit \$35,000 into its restricted well and well pump maintenance account instead of \$49,000 consistent with Finding No. 10. C. above.

4. Petitioner shall comply with the restricted account reporting, withdrawal, and all other requirements, as detailed in and consistent with Finding No. 10. C. above and the 2015 Rate Order.

5. Petitioner shall file a revised tariff under this Cause and comply with the true-up procedure detailed in and consistent with Finding No. 10.F. above.

6. Prior to implementing the rates approved, Petitioner shall file the tariff and applicable rate schedules under this Cause for approval by the Commission's Water/Wastewater Division. Such rates and charges shall be effective on or after the Order date subject to the Division's review and agreement with the amounts reflected.

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

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

**APPROVED:**

JAN 02 2020

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

  
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Mary M. Becerra  
Secretary of the Commission