

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF THE PIKE-GIBSON WATER, INC., OF GIBSON, PIKE AND WARRICK COUNTIES, INDIANA, FOR APPROVAL OF A NEW SCHEDULE OF WATER RATE AND CHARGES

CAUSE NO. 43528

FINAL ORDER

APPROVED:

JAN 2 1 2009

BY THE COMMISSION:

Jeffrey L. Golc, Commissioner Lorraine Hitz-Bradley, Administrative Law Judge

On July 2, 2008, Pike-Gibson Water, Inc. ("Pike-Gibson" or "Petitioner") filed with the Indiana Utility Regulatory Commission ("Commission") an application requesting authority to increase its rates and charges for water service. Pursuant to notice and as provided for in 170 I.A.C. § 1-1.1-1 5, a Prehearing Conference in this Cause was held in Room 224 of the National City Center, 101 West Washington Street, Indianapolis, Indiana at 10:30 a.m. on July 24, 2008. Proofs of publication of the notice of the Prehearing Conference have been incorporated into the record and placed in the official files of the Commission. The Petitioner and the Office of Utility Consumer Counselor ("Public" or "OUCC") appeared and participated at the Prehearing Conference. No members of the general public appeared.

Pursuant to the terms of the prehearing Conference Order, Petitioner filed its case-in-chief on August 7, 2008, the OUCC filed its testimony and exhibits on October 22, 2008, and Petitioner filed its rebuttal evidence on November 5, 2008. On November 17, 2008, the Commission issued a docket entry requesting that Petitioner provide responses to certain questions. On November 19, 2008, the parties filed a Notice of Settlement¹ that generally set forth the terms and conditions of the settlement agreement. The evidentiary hearing was held on November 20, 2008, where the parties' prefiled testimony, Petitioner's responses to the Commission's November 17, 2008 docket entry and live testimony from OUCC witness Charles Patrick in support of the settlement agreement was accepted as evidence of record. No members of the general public appeared or otherwise sought to testify.

Based upon the applicable law and the evidence herein, and being duly advised, the Commission now finds that:

¹ The parties did not file an actual Stipulation and Settlement Agreement, but set forth the terms in general language and through settlement testimony and exhibits.

- 1. <u>Statutory Notice and Commission Jurisdiction</u>. Due, legal, and timely notice of these proceedings was given as required by law. Pike-Gibson is a "public utility" as defined in Ind. Code § 8-1-2-1, et seq. In this proceeding, Petitioner sought approval to increase its current rates and charges. Based on Petitioner's status as a public utility and the relief sought, this Commission has jurisdiction in this matter.
- 2. Petitioner's Characteristics. Pike-Gibson Water, Inc., is an Indiana not-for-profit corporation organized and existing under and by virtue of the laws of the State of Indiana, incorporated on September 14, 1972, providing approximately 3,250 members with water service in the rural area of Gibson, Pike and Warrick Counties, Indiana. Its principal office is in Gibson County, Indiana, with a mailing address of 300 N. Jackson Street, P. O. Box 126, Oakland City, Indiana 47660. Growth has been moderate at about 30 additional customers per year during the last five years. The utility obtains treated water from the City of Petersburg (about 69% of the required total) at a cost of \$1.06 per thousand gallons and the remainder from the Patoka Lake Regional Water and Sewer District at a cost of \$2.64 per thousand gallons. Pike-Gibson's system consists primarily of 355 miles of mains (95% PVC pipe), five water storage tanks, and three booster pump stations. The utility does not perform disinfection or any other treatment process within its system.
- 3. Existing Rates, Test Year, and Relief Requested. Petitioner's existing rates and charges were established in Cause No. 42243 on January 15, 2003. Based on a test year ending December 31, 2007, as adjusted for changes which are fixed, known, and measurable, and occuring within twelve (12) months, Petitioner proposed in its direct case to increase its base rates by 17.7% across-the-board pursuant to Ind. Code § 8-1-2-61.5. If approved, Petitioner's proposed rate adjustment would have increased its pro forma revenues to \$1,432,489.

The Parties' November 19, 2008 Notice of Settlement, in conjunction with the live hearing testimony provided by OUCC witness Patrick, requests a proposed across-the-board rate increase of 12.7%.

4. Evidence of the Parties.

A. <u>Petitioner's Case-In-Chief</u>. Pike-Gibson's case-in-chief consisted of the August 7, 2008 pre-filed testimony and exhibits of Patrick Callahan, C.P.A. Mr. Callahan explained that Petitioner's current rates and charges were insufficient based on income statements reflecting a loss for calendar years 2005, 2006 and 2007. He described why Petitioner's proposed 17.7% increase (\$212,997) to annual operating revenues was necessary and reasonable. He described how his financial rate study considered Petitioner's historical financial information, which when adjusted for anticipated occurrences that are fixed, known and measurable created Petitioner's pro-forma projections.

Mr. Callahan proposed several adjustments necessary to adjust the test year income statement to reflect twelve months of normal operations and to reflect the proposed rate increase, along with the additional Indiana Utility Regulatory Commission fee associated with the proposed increase. He also provided testimony regarding other revenue requirements, including

historical extensions and replacements, Petitioner's proposed capital improvement plan, debt and working capital.

B. The OUCC's Case-In-Chief. The OUCC filed the testimony of Charles E. Patrick and Harold L. Rees on October 22, 2008. Mr. Rees' testimony focused on engineering aspects of Petitioner's request, describing the utility as "well operated and in generally good condition." He supported the looping projects, SCADA system and vehicle purchases that composed Petitioner's proposed Capital Improvement Plan. He recommended that Pike-Gibson establish a customer complaint file for written customer complaints (from forms or letters); prepare a written restoral plan for failures and emergencies (for all major areas of the utility) and supply copies to the Commission and the OUCC; review its policy with respect to the possible use of high efficiency electric motors; review the potential for In WARN to support the utility in case of disasters or other serious emergencies; and form a Water Conservation Committee and develop a Water Conservation Action Plan by the end of 2009, with a copy of the Action Plan provided to the Commission and the OUCC when completed.

OUCC witness Patrick's testimony, schedules and attachment addressed the accounting and financial aspects of Petitioner's request. He set forth the OUCC's recommended 10.8% rate increase and explained how the OUCC's proposed \$1,383,381² net revenue requirement compared to Petitioner's \$1,432,489. He explained that the OUCC accepted many of Petitioner's Test Year Revenue Adjustments (residential growth during the Test Year, residential growth since the end of the Test Year, elimination of non-recurring or non-operating revenue and Petitioner's proposed reclassification of penalty revenues), but rejected others (reduced residential sales to reconcile with test year billings and elimination of tap fees). Mr. Patrick also pointed out that Petitioner collected \$25 per meter connection during the test year from new customers in existing homes and that this is not a fee included on Petitioner's tariff. During the test year Petitioner collected \$2,650 from this fee without Commission approval and Mr. Patrick recommended that the Commission order Petitioner to discontinue collection of these fees until such time as they are added to Petitioner's tariff.

The OUCC likewise accepted several of Petitioner's proposed adjustments regarding Operating Expenses (purchased water, purchased power, payroll, booster station/pump maintenance, reclassified capital expenditures, rate case expense, payroll taxes, and depreciation), but proposed modifying others (health/life insurance benefits, fuel charges, tank painting and maintenance, non-allowed expenditures, and Commission fees). Mr. Patrick testified that Petitioner did not require additional working capital. Regarding debt service, Mr. Patrick took issue with Petitioner's proposal to use a 3-year average (2008 – 2010). Mr. Patrick pointed out that the 2012 Fifth Third Bank maturity, Petitioner's largest debt obligation, would be reduced by \$71,000 (27.3% of Petitioner's annual debt) after 2011 and paid off entirely by the end of 2012 (a \$114,894 reduction, or 67.3% of Petitioner's 2012 debt service). Given the

² The testimony and exhibits in support of the settlement variously cite this number as 1,383,411 and 1,383,381. After review of the evidence, we have identified the higher number as an addition/subtraction error and corrected it accordingly in this Order. The \$30.00 difference is so small as to make no appreciable difference in the resulting calculations.

average 7-year period between Petitioner's last rate cases, Mr. Patrick proposed using a 4-year average (2009-2012). Mr. Patrick stated that eliminating the \$114,894 from Petitioner's 2013 revenue requirement would be equivalent to more than half of Petitioner's requested \$213,000 increase in this case. He noted that it would almost completely offset the OUCC's recommended \$130,000 increase. To prevent ratepayers from paying for a non-existent expense after 2012, Mr. Patrick recommended that the Commission order Petitioner to file with the Commission, not later than February 1, 2013, a new schedule of rates and charges that reflects the removal of the 2012 Fifth Third Bank Maturity from revenue requirements. Mr. Patrick stated that the OUCC believed such an order would be consistent with the spirit of the Commission's February 13, 2008 order in Cause No. 43298 (Vectren North) regarding rate case expense.

Mr. Patrick accepted Petitioner's proposed 3-year capital improvements (vehicles, SCADA [telemetry], looping projects), and added meter replacements for approximately 10% of the meters in service per year, increasing the annual revenue requirement by \$16,000 to a total of \$118,156. He also proposed to use \$95,500 received from Petitioner's sale of a water main to Black Beauty Coal Mine subsequent to the test year, to reduce the total three-year capital improvement annual requirement to \$86,323 annually.

OUCC witness Patrick testified that Petitioner was not following the Commission's main extension rules and instead was requiring customers to install line extensions themselves and maintain the line for one year before donating it to Petitioner. Mr. Patrick said that his understanding of the Commission's rule required Petitioner to keep records of each line extension and to reimburse the original customer for up to ten (10) years for any customers that subsequently connect. He also noted that it was unclear if Petitioner pays for any increase in a line extension over-sizing or if the customer pays for this, and recommended that Petitioner be required to adhere to the Commission's main extension rules.

Mr. Patrick testified that Petitioner was not properly recording utility plant in service ("UPIS") donated to the utility. He noted that donated property, including main extensions, as discussed above, were being accepted by Petitioner as donated property but Petitioner was not recording it as UPIS and Contributions In Aid of Construction ("CIAC"). Mr. Patrick said the OUCC discussed the issue with Petitioner, who indicated that the utility was previously unaware of the accounting treatment of donated property and would adopt the correct utility accounting treatment.

C. <u>Pike-Gibson's Rebuttal</u>. Mr. Callahan's November 5, 2008 rebuttal testimony noted that he agreed with OUCC Witness Patrick on all issues except (1) the reduction of revenue requirements for tap fees, and (2) the amortization of debt service over four years. Mr. Callahan discussed the principal of "matching" fees and that in his view, tap fees and costs should be removed from test year revenues and expenses respectively. Mr. Callahan argued that Mr. Patrick had not "matched" tap fees and costs because the OUCC eliminated the tap expenses (by accepting Petitioner's Adjustment No. 11 for tap expenses and road bores), but included the tap revenues.

Discussing the debt-service issue, Mr. Callahan agreed with the OUCC's removal of 2008 as one of the years used to calculate the average debt amount and noted that the \$17,805 difference between Petitioner's requested \$260,483 annual debt service and the OUCC's \$242,678 was Petitioner's proposed 3-year (2008 – 2010) average compared to the OUCC's proposed 4-year (2009-2012) average. Mr. Callahan said that the Fifth Third loan's variable interest rate concerned him. He stated that if the rate increased, Petitioner will be required to pay more interest and less principal. He argued that Petitioner could use the extra \$17,805 annually to make early principal payments on the other two outstanding debt obligations, saving interest expense on those loans.

D. <u>Notice of Settlement and Settlement Testimony</u>. On November 19, 2008 the Parties reached an agreement in principle and the OUCC filed a *Notice of Settlement* with the Commission. The Notice stated that the Parties had resolved the remaining two issues, with Petitioner accepting the OUCC's debt service calculation and agreeing that within sixty (60) days after paying the final installment on the expiring debt, Petitioner will either reduce its rates or file for a new rate case, and the OUCC making concessions regarding the accounting treatment of test year tap fee revenues and expenses.

At the November 20, 2008 hearing the parties offered all of their prefiled testimony as well as Petitioner's responses to the Commission's November 17, 2008 docket entry. OUCC witness Patrick testified in support of the settlement. He explained how the OUCC's schedules basically acted as the Settlement Schedules with only slight modification, since Petitioner had accepted the OUCC's debt service adjustment and that only the tap fees items required adjusting. Mr. Patrick stated that the parties had agreed that rather than attempt to match and remove tap fees and revenues from the test year, that they would match the two by allowing both to remain in test year expense, eliminating Mr. Callahan's (\$22,858) tap fee adjustment, changing Mr. Patrick's O&M adjustment 6-7 (schedule 6, page 4) to zero. Based on the settlement, the parties' proposed revenue requirement for Petitioner was as follows:

C	Original Filing				Per
	Per	Per	Settlement		Settlement
•	Petitioner	OUCC	<u>Ad</u> j	ustments	Agreement
Total Revenue Requirements	\$1,442,556	\$ 1,393,448	* \$	22,858	########
Less: Interest Income	(10,067)	(10,067)		-	(10,067)
Net Revenue Requirements	\$1,432,489	\$ 1,383,381	\$	22,858	########
Less: Revenues at curent rates subject to increase	1,201,998	1,204,786		-	1,204,786
Other revenues at current rates	17,494	48,694		-	48,694
Net Revenue Increase Required	\$ 212,997	\$ 129,901	\$	22,858	\$ 152,759
Add: Additional IURC Fee		. 157		_	184
Recommended Increase	\$ 212,997	\$ 130,058	\$	22,858	\$ 152,759
Recommended Percentage Increase	17.7%	10.8%		1.9%	12.7%

^{*} Public Exhibit #3 filed at the hearing on 11/20/08 incorrectly indicated E&R of \$86,353. The testimony of OUCC witness Chuck Patrick indicates E&R is actually \$86,323.

5. <u>Discussion and Findings</u>. 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.* (quoting *Citizens Action Coalition v. PSI Energy*, 664 N.E.2d 401, 406 (Ind. App. 1996)). Thus, the Commission "may not accept a settlement merely because the private parties are satisfied; rather [the Commission] must consider whether the public interest will be served by accepting the settlement." *Citizens Action Coalition*, 664 N.E.2d at 406.

Furthermore, any Commission decision, ruling, or order, including the approval of a settlement, must be supported by specific findings of fact and sufficient evidence. *U.S. Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coalition v. Public Service Co.*, 582 N.E.2d 330, 331 (Indiana 1991)). The Commission's own procedural rules require that settlements be supported by probative evidence. 170 I.A.C. § 1-1.1-17(d). Therefore, before the Commission can approve the Settlement Agreement, we must determine whether the evidence in this Cause sufficiently supports the conclusions that the Settlement Agreement is reasonable, just, and consistent with the purpose of Ind. Code § 8-1-2, and that such Settlement Agreement serves the public interest.

As we review the reasonableness of the Settlement Agreement, it is appropriate to recognize the information presented by the parties. The original petition, testimony and exhibits, the OUCC's testimony and exhibits, Petitioner's rebuttal testimony, exhibits and responses to our docket entry, the Notice of Settlement and Settlement Testimony, all provide specific detail as to the *pro forma* adjustments to Pike-Gibson's test year revenues and expenses. The parties' evidence also provides us with sufficient background as to the original positions taken by the parties and the reasonableness of the compromised positions reached through negotiations. The parties have expended time and effort to resolve their differences and to support their Settlement Agreement.

Based on the detailed record in this Cause, the Settlement should be approved in its entirety. Accordingly, Petitioner is authorized to increase its rates and charges across-the-board by 12.7%, in accordance with the Settlement, effective upon the appropriate filing with the Commission's Water/Sewer Division to reflect such increase. The chart provided in support of the settlement, set forth in section 4(D) above, reflects the parties' original positions, as well as the approved revenue requirement. For illustrative purposes, the monthly bill of a residential customer, based upon 5,000 gallons usage, will increase from \$28.33 to \$31.93.

The parties agree that the Settlement 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, we find that our approval herein should be construed in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434 (Ind. Util. Rergulatory Comm'n, Mar. 19, 1997).

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

- 1. The November 19, 2008 Settlement between Petitioner and the OUCC, as set forth in the Notice of Settlement, exhibits, accounting exhibits, and testimony shall be and hereby is approved in its entirety.
- 2. Petitioner shall be and is hereby authorized to a rate increase of 12.7% effective upon issuance of this Order and completing the appropriate filings with the Water/Sewer Division of the Commission pursuant to ordering paragraph 7 below.
- 3. Petitioner shall take steps to comply with the five engineering recommendations from OUCC witness Rees as set forth in section 4B above. Specifically, the written restoral plan and water conservation Action Plan shall be filed with the Commission and the OUCC in this Cause No. on or before December 31, 2009.
- 4. Petitioner shall, within sixty days (but no later than February 1, 2013) of the date of making its final payment on its Fifth Third debt maturity, either file a new tariff that reflects the removal of said obligation from rates, or file a new rate case.
- 5. Petitioner shall, effective upon issuance of this order, take all necessary steps to ensure it fully complies with the Commission's main extension rules.
- 6. Petitioner shall, effective upon issuance of this order, cease collecting the \$25 per meter connection fee from new customers in existing homes unless and until said fee is appropriately added to Petitioner's tariff.
- 7. Petitioner shall file with the Water/Sewer Division of the Commission a new schedule of rates and charges. Such new schedules of rates and charges shall be effective upon filing and approval by the Water/Sewer Division and shall apply to water usage from and after the date of approval.
 - 8. This Order shall be effective on and after the date of its approval.

HARDY, GOLC, LANDIS, SERVER AND ZIEGNER CONCUR:

APPROVED:

JAN 2 1 2009

A. Howe

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

Brenda A. Howe

Secretary to the Commission