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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION)
OF CLINTON TOWNSHIP WATER) CAUSE NO. 43696 U
COMPANY FOR A NEW SCHEDULE)
OF RATES AND CHARGES) APPROVED:

OCT 14 2009

BY THE COMMISSION:

Jeffrey L. Golc, Commissioner
David E. Veleta, Administrative Law Judge

On May 28, 2009, the Clinton Township Water Company ("Clinton Township") filed with the Indiana Utility Regulatory Commission ("Commission") its small utility application for a rate change pursuant to Indiana Code § 8-1-2-61.5 and 170 IAC § 14-1. Clinton Township is seeking an increase in rates of \$114,534, or 26.95% above current rates. On June 2, 2009, Clinton Township submitted proof of publication of the notice of its application. On June 11, 2009 the Commission issued a memorandum stating that Clinton Township's application was complete.

On August 27, 2009, as required by 170 IAC § 14-1-4(a), the Indiana Office of Utility Consumer Counselor ("OUCC" or "Public") filed its report. On September 9, 2009, the OUCC and Clinton Township filed a Settlement Agreement ("Settlement"), including attachments, with the Commission.

Pursuant to Indiana Code § 8-1-2-61.5, a formal public hearing is not required in rate cases involving small utilities that serve fewer than 5,000 customers, primarily provide retail service to customers, and do not serve extensively another utility. However, a formal public hearing is required if requested by at least ten customers, a public or municipal corporation, or by the Public. No customer request for a hearing was received by the Commission and accordingly, no hearing has been held.

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

1. Statutory Notice and Commission Jurisdiction. The evidence presented reflects legal notice of the filing of this small utility rate case was published in accordance with applicable law and Clinton Township gave proper notice to its customers of the nature and the extent of the proposed rate increase. Clinton Township, formerly a "not for profit water utility," is a public water authority, which is a political subdivision pursuant to Indiana Code § 13-18-16-16, and approval of its rates and charges is subject to Indiana Code § 8-1.5-3-8. The Commission finds that due, legal and timely notice of the matters in this Cause was given and published as required by law and that the Commission has jurisdiction over Clinton Township and the subject matter of this proceeding.

2. **Clinton Township's Characteristics.** Clinton Township is a public water authority serving approximately 844 retail customers and one wholesale customer, St. Bernice Water Corporation, in and near Clinton Township, located in the southern portion of Vermillion County.

3. **Relief Requested.** Clinton Township requested a 26.95% across-the-board increase. This increase would generate \$539,467 in revenues, which is an \$114,534 increase from current revenues of \$424,933. The increase is requested to cover escalating operating and maintenance costs.

4. **Test Year.** Clinton Township used a test year ending December 31, 2008. Clinton Township did not adjust for fixed, known, and measurable changes which have occurred, or are likely to occur, within one year of the test year.

5. **Clinton Township's Case-in-Chief.** Clinton Township's case-in-chief consisted of the small utility application for a rate change submitted by Clinton Township on May 28, 2009. As discussed above, Clinton Township proposed a 26.95% across-the-board increase that would increase its revenues by \$114,534.

6. **The OUCC Report.** The OUCC filed its report on August 27, 2009. The OUCC discussed the accounting and financial aspects of Clinton Township's request. The OUCC recommended a 16.34% rate increase and explained how its proposed \$496,365 net revenue requirement compared to Clinton Township's \$539,467. The OUCC disagreed with Clinton Township's proposed \$54,910 debt service reserve adjustment to cover a shortage. The OUCC Attachment CEP-1 includes an explanation of how Clinton Township relied on experts who managed the debt service reserve to ensure that it was fully funded in accordance with bond covenants. The trustee of the debt failed to calculate the required amounts correctly, which led to insufficient funds being placed in the debt service reserve account. The OUCC also pointed out that debt service reserve funds had been included in Clinton Township's last rate case, Cause No. 42389. In addition, the OUCC testified that Clinton Township had already recovered those funds from ratepayers and that Clinton Township was still in possession of those funds, although not in the debt service reserve account. The OUCC's report indicated that Clinton Township had \$163,395 in unrestricted cash on July 31, 2009, more than enough to pay the \$54,910, particularly since Clinton Township was granted 12 months to make the payment. The OUCC's report recommended that the Commission require Clinton Township to pay the debt service reserve deficit out of unrestricted cash.

The OUCC noted that Clinton Township's high unaccounted-for water was in part due to the high percentage of relatively brittle cast iron pipe and the utility's service area, which is honeycombed with abandoned coal tunnels that cause unstable soil conditions and movement and make main leaks difficult to find. The OUCC agreed with Clinton Township's belief that water loss will be less for 2009 due to recent replacement of deteriorated mains and faulty valves, combined with a new master meter at the well. The OUCC recommended that Clinton Township establish a regular water loss/leak locating program with results and status of the efforts reported to the Commission and OUCC as an attachment to the utility's 2009 and 2010 Annual Reports.

7. **Settlement.** The Settlement stated that Clinton Township agreed with OUCC's proposed 16.34% rate increase that creates a net revenue requirement of \$496,365, resulting in an annual increase of \$68,810. The Agreement also states that Clinton Township will (1) take steps to address its unaccounted-for water by locating leaks and submitting separate water loss reports for the calendar years 2009 and 2010 as an attachment to the respective Annual Reports, (2) institute a 15-year meter replacement program for its residential meters, (3) form a Water Conservation committee, (4) adopt a 10-year tank painting interval, (5) investigate the value of joining Indiana's Water/Wastewater Agency Response Network ("InWARN") and (6) establish a restricted account for funds received for tank painting and maintenance. Clinton Township will provide the OUCC and the Commission detail of the restricted account activity each year as an attachment to the Annual Report. The differences between the original request and the Settlement can be summarized below:

	Per Clinton Township	Per OUCC/ Settlement
<u>Revenue Requirements:</u>		
Extensions and Replacements	\$ 74,250	\$ 82,463
Operation & Maintenance Exp.	192,251	199,038
Taxes Other Than Income	-	4,874
Working Capital	-	-
Debt Service	218,056	218,056
Debt Service Reserve	54,910	
Total Revenue Requirements	<u>539,467</u>	<u>504,431</u>
Less: Interest Income	-	7,906
Other Revenues	-	160
Net Revenue Requirements	<u>539,467</u>	<u>496,365</u>
Less: Revenues at Current Rates	416,854	421,194
Other Revenues at current rates	8,079	6,361
Revenue Increase Required	<u>\$ 114,534</u>	<u>\$ 68,810</u>
Recommended Percentage Increase	<u>26.95%</u>	<u>16.34%</u>

8. **Discussion and Findings.** 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. 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 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. *United States Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coalition v. Public Service Co.*, 582

N.E.2d 330, 331 (Ind. 1991)). The Commission's own procedural rules require that settlements be supported by probative evidence. 170 IAC 1-1.1-17(d). Therefore, before the Commission can approve the Settlement, we must determine whether the evidence in this Cause sufficiently supports the conclusions that the Settlement is reasonable, just, and consistent with the purpose of Indiana Code § 8-1-2, and that such agreement serves the public interest.

A review of the original application, the OUCC's report, and the Settlement provide specific detail as to the adjustments to Clinton Township's test year revenue and expenses and the need for and reasonableness of the proposed rate increase. The Parties' evidence also provides the Commission with sufficient background regarding the original positions taken by the Parties and the reasonableness of the compromised positions reached through negotiations.

With respect to Clinton Township's debt service reserve fund, the Settlement requires Clinton Township to provide details of the debt service reserve fund account activity each year as an attachment to the utility's annual report. The OUCC's report recommended that the Commission require Clinton Township to pay the debt service reserve deficit out of unrestricted cash. The Commission finds that the OUCC's recommendation is reasonable and should be implemented. Therefore, Clinton Township shall pay the debt service reserve deficit out of unrestricted cash.

The Commission finds that based on the record, the Settlement, with the addition of the requirement to eliminate the debt service reserve account deficiency through the use of the utility's unrestricted cash account, is in the public interest and should be approved. With regard to future citation of the Settlement, the Commission finds the Settlement and our approval of it should be treated in a manner consistent with our finding in *Richmond Power & Light, (Ind. Util. Reg. Comm'n, Cause No. 40434, Mar. 19, 1997)*. Accordingly, Clinton Township is authorized to increase its rates by 16.34%.

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

1. The September 9, 2009 Settlement executed between Clinton Township and the OUCC, a copy of which is attached hereto as Exhibit A, shall be and hereby is approved as set forth in Finding Paragraph No. 8 above.
2. Clinton Township shall be and hereby is authorized to implement an overall rate increase of 16.34% or \$68,810 effective upon the issuance of this Order and completing the appropriate filings with the Commission's Water/Sewer Division as set forth more fully in Ordering Paragraph No. 3.
3. Clinton Township shall file with the Commission's Water/Sewer Division 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.

4. In accordance with Indiana Code § 8-1-2-70 and GAO 2009-3, Clinton Township shall pay the following itemized charges within twenty days from the date of the Order to the Secretary of this Commission, as well as any additional costs which were or may be incurred in connection with this Cause:

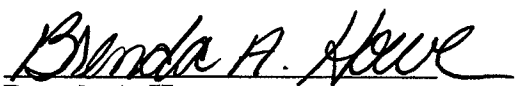
Commission Charges:	\$ 1,000.00
OUCG Charges:	<u>\$ 2,000.00</u>
Total:	\$ 3,000.00

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

ATTERHOLT, GOLC, LANDIS, AND ZIEGNER CONCUR; HARDY ABSENT:

APPROVED: OCT 14 2009

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


Brenda A. Howe,
Secretary to the Commission

FILED
September 09, 2009
INDIANA UTILITY
REGULATORY COMMISSION

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN RE THE MATTER OF THE PETITION)
OF CLINTON TOWNSHIP WATER)
COMPANY FOR A NEW SCHEDULE) CAUSE 43696-U
OF RATES AND CHARGES)

JOINT STIPULATION AND SETTLEMENT AGREEMENT

This Joint Stipulation and Settlement Agreement ("Settlement Agreement") is entered into this 28th day of August, 2009, by and between Clinton Township Water Company ("Clinton Township Water Company" or "Petitioner") and the Office of the Utility Consumer Counselor ("OUCC"), who stipulate and agree for purposes of settling all matters in this Cause that the terms and conditions set forth below represent a fair and reasonable resolution of all issues in this Cause, subject to their incorporation in a final Indiana Utility Regulatory Commission ("Commission") Order without modification or the addition of further conditions that may be unacceptable to either party. If the Commission does not approve the Settlement Agreement in its entirety and incorporate the conclusions herein in its final Order, the entire Settlement Agreement shall be null and void and deemed withdrawn, unless otherwise agreed to in writing by the parties.

Terms and Conditions of Settlement Agreement

1. **Requested Relief.** On May 28, 2009 Petitioner initiated this Cause by filing a small utility application with the Commission requesting authority to increase its rates and charges for water service by 26.95%.

2. **Settlement.** Through analysis, discussion, and negotiation, as aided by their respective technical staff and experts, Petitioner and the OUCC have agreed on terms and conditions set forth herein that resolve all issues between them in this Cause.

3. **Revenue Requirement and Rates.** The parties agree that Petitioner should be authorized to increase its rates and charges for water utility service to reflect ongoing net revenue requirements in an amount of \$496,365, resulting in an annual increase of \$68,810 or sixteen point thirty four percent (16.34%) over Petitioner's existing rates and charges. The prefiled accounting schedules of OUCC witness Patrick, attached to the OUCC report in this case and incorporated into this Settlement Agreement by reference, reflect the settlement reached herein and document the changes to Petitioner's revenue requirements.

4. **Settlement Terms.** As described in OUCC's report and Petitioner's witness Holbert's settlement testimony, the parties have agreed as follows:

- a. Petitioner's authorized revenue requirement was arrived at by OUCC accepting the majority of Petitioner's proposed adjustments, then Petitioner accepting several OUCC adjustments as detailed on pages 10-19 of OUCC's report.
- b. Petitioner will take steps to address its unaccounted-for water loss by locating leaks and submitting separate water loss reports for the calendar years 2009 and 2010 as an attachment to the respective Annual Reports, instituting a 15-year meter replacement program of its residential meters and forming a Water Conservation committee. Petitioner will also adopt a 10-year tank painting interval, , investigate the value of joining InWARN and establish a restricted account for funds received for tank painting and maintenance and to provide

the OUCC and IURC detail of the reserve account activity each year as an attachment to the Annual Report. Additional details can be found in pages 15-19 of the OUCC report.

- c. The parties will jointly prepare and submit a proposed order to the Commission.

5. **Admissibility and Sufficiency of Evidence.** The parties agree to stipulate to the admission of evidence of Petitioner and the OUCC into the record of this proceeding without objection, and agreed that such evidence constitutes substantial evidence sufficient to support the Settlement Agreement and provides an adequate evidentiary basis upon which the Commission can make all findings of fact and conclusions of law necessary for the approval of this Settlement Agreement as filed.

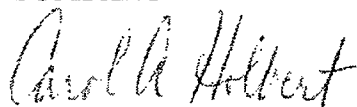
6. **Non-Precedential Effect of Settlement.** The parties agree that the facts in this Cause are unique and all issues presented fact specific. Therefore, the Settlement Agreement shall not constitute nor be cited as precedent by any person or deemed an admission by any party in any other proceeding except as necessary to enforce its terms before the Commission or any court of competent jurisdiction. This Settlement Agreement is solely the result of compromise in the settlement process, except as provided herein, is without prejudice to and shall not constitute a waiver of any position that either party may take with respect to any issue in any future regulatory or non-regulatory proceeding.

7. **Authority to Execute.** The undersigned have represented and agreed that they are fully authorized to execute the Settlement Agreement on behalf of their designated clients who will hereafter be bound thereby.

8. **Approval of Settlement Agreement in its Entirety.** As a condition of this settlement, the parties specifically agree that if the Commission does not approve this Joint Stipulation and Settlement Agreement in its entirety and incorporate it into the Final Order as provided above, the entire Settlement Agreement shall be null and void and deemed withdrawn, unless otherwise agreed to in writing by the parties. The parties further agree that in the event the Commission does not issue a Final Order in the form that reflects the Agreement described herein, the matter should proceed to be heard by the Commission as if no settlement had been reached unless otherwise agreed to by the parties in a writing that is filed with the Commission.

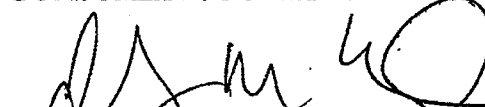
9. **No Other Agreements.** There are no agreements in existence between the parties relating to the matters covered by this Settlement Agreement that in any way affect this Settlement Agreement.

**CLINTON TOWNSHIP WATER
COMPANY**



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**INDIANA OFFICE OF THE UTILITY
CONSUMER COUNSELOR**

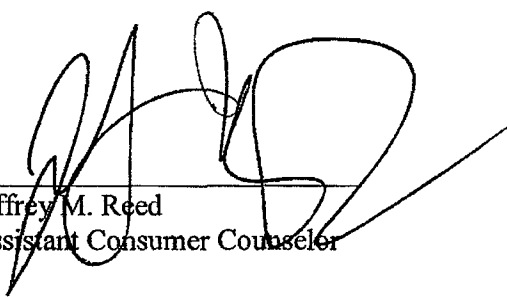


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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing "Stipulation and Settlement Agreement" was served upon the following by electronic mail this 9th day of September, 2009:

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Assistant Consumer Counselor