

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF AQUA)
INDIANA, INC.'S DARLINGTON WATER) CAUSE NO 45314-U
DIVISION FOR A NEW SCHEDULE OF RATES)
AND CHARGES.

OUCG'S NOTICE OF SETTLEMENT AGREEMENT

The Office of Utility Consumer Counselor ("OUCG") hereby submits a Joint Stipulation and Settlement Agreement between the OUCG and Aqua Indiana, Inc., ("Applicant") establishing a post order process for revising Applicant's minimum charge for its Darlington operations and other terms.

Respectfully Submitted,

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR



Daniel M. Le Vay, Atty. No. 22184-49
Deputy Consumer Counselor

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing *Indiana Office of Utility Consumer Counselor's Notice of Settlement Agreement* has been served upon the following counsel of record in the captioned proceeding by electronic service on April 28, 2020.

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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

**IN THE MATTER OF THE APPLICATION OF AQUA)
INDIANA INC.'S DARLINGTON WATER DIVISION FOR) CAUSE NO. 45314-U
A NEW SCHEDULE OF RATES AND CHARGES)**

JOINT STIPULATION AND SETTLEMENT AGREEMENT

On November 1, 2019, Aqua Indiana, Inc., (“Applicant”) filed its Small Utility Rate Filing requesting authority to increase the recurring monthly rates and charges its Darlington Water Division collects for water services provided to the public. Applicant proposed an across-the-board increase of approximately 23.2% in the recurring monthly rates and charges of its Darlington Water Division in order to produce an increase in operating revenues of \$48,381.

The Indiana Office of Utility Consumer Counselor (“OUCC”) reviewed the Applicant’s filing, met with representatives of Applicant and requested additional information from Applicant through both formal and informal discovery. Subsequent to the filing of the OUCC’s Report and Applicant’s Response, Applicant and the OUCC engaged in settlement discussions. As a result of those discussions, Applicant and the OUCC reached a consensus with respect to all of the following:

1. **Test Year.** The period used for determining the revenues and expenses incurred by Applicant’s Darlington Water Division to provide water service to the public was the twelve months ended September 30, 2019. With revenue and expense adjustments for changes that were fixed, known and measurable for ratemaking purposes and occurring through September 30, 2020 this test year is sufficiently representative of the normal

operations of Applicant's Darlington Water Division to provide reliable information for ratemaking purposes.

2. **Rate Base.** The utility properties used and useful for the provision of water service to the public by Applicant's Darlington Water Division are properly valued for purposes of this proceeding at **\$1,431,946** as of September 30, 2019. Both parties agree that the determination of rate base should include the unamortized acquisition adjustment (approved in Cause No. 43087) as well as an offset for accumulated deferred income taxes.¹

3. **Allowed Return.** Both parties agree that an overall rate of return on rate base of **6.87%**, as proposed by Applicant, will adequately and fairly compensate Applicant for its investments, while maintaining the financial viability of the water utility of Applicant's Darlington Water Division. Applying a **6.87%** rate of return to the fair value rate base of **\$1,431,946** would generate for purposes of this Cause a fair return of **\$98,349** for the water utility of Applicant's Darlington Water Division.

4. **Operating Results at Present Rates.** Total *pro forma* operating revenues at present rates for the water utility of Applicant's Darlington Water Division are **\$215,141** for purposes of this proceeding. With *pro forma* present total operating expenses for purposes of this proceeding at **\$151,790**, the *pro forma* net operating income under present rates for purposes of this proceeding is **\$63,351** for Applicant's Darlington Water Division. The parties agree this net operating income amount is insufficient to cover the necessary and reasonable operating expenses of Applicant's Darlington Water Division and provide the opportunity for Applicant to earn the fair return to which it is lawfully entitled.

¹ As reflected in the OUCC's report, if the acquisition adjustment and accumulated deferred income taxes had been included, rate base would be valued at \$1,436,511.

5. **Allowed Increases.** Both parties agree for purposes of settlement that the current recurring monthly rates and charges of Applicant's Darlington Water Division could be increased to levels sufficient to produce additional operating revenues of **\$48,381** from water service, which reflects an approximately **23.2%** increase in operating revenues. The above-stated amount of additional operating revenues include additional federal and state income taxes, Indiana gross receipts tax, bad debt expense, and the Commission's fee. Further, the amount of that allowed increase in additional revenues will provide Applicant an opportunity to realize adequate utility operating income, enable Applicant to maintain and support its credit and provide adequate financing, assure market confidence in its financial soundness, allow Applicant to earn a return equal to that available on other investments of comparable risk, and permit it to obtain reasonable additional capital to enable Applicant to render adequate, reliable and safe water utility services to the public.

6. **New Schedules of Rates.** In order to implement the rate increase described in Paragraph 5 above, Applicant acknowledges it shall be required to file with the Commission's Water/Wastewater Staff within thirty (30) days of the Commission's issuance of its Final Order a new schedule of rates and charges for its Darlington Water Division.

7. **Rate Design.** In its report, the OUCC noted the minimum consumption of 6,000 gallons per month Applicant used to establish its minimum charge was unusually high. The OUCC proposed Applicant be required to compare the effects of decreasing its minimum charge usage from 6,000 gallons per month to 5,000, 4,000, and 3,000 gallons per month and make a compliance filing comparing the various impacts and, if appropriate, propose a lower minimum consumption. Applicant acknowledged a lower minimum consumption was desired, but believed changing its rate design created more uncertainty that

it would meet its revenue requirement due to potential changes in customer usage patterns as a result. Applicant and the OUCC, hereafter the Settling Parties, agree to the following:

A. **Rate Design Modification Process.** Within 90 days of the final order in this Cause, Applicant will evaluate and compare the effect on its customers' rates of minimum usage charges based on minimum consumption of 6,000, 5,000, 4,000, and 3,000 gallons per month, as well as any other minimum consumption Applicant decides to compare. Applicant's evaluation shall be in written form and provided to the OUCC so that Applicant and the OUCC may attempt to reach consensus on a new minimum charge and revenue neutral rate design. If the parties reach a consensus on a proposed rate design, using the 30-day filing process Applicant shall file its evaluation and its proposed schedule of rates and charges with the Commission for approval. If the parties are unable to reach a consensus, Applicant and the OUCC shall so advise the Commission, and the rate design based on the current 6,000 gallon minimum usage charge shall continue through the next rate case. However, in its next rate case Applicant shall present rate design information for the Commission to consider a minimum usage charge based on minimum consumption lower than 6,000 gallons.

B. **Future Recovery of Costs.** The Settling Parties agree Applicant may defer any actual costs of preparing the alternative rate structures, which costs are not already embedded in its rates in this Cause, not to exceed \$2,000. To that end, Applicant may treat such costs as a regulatory asset and defer amortization until Applicant's next general rate case order. The Settling Parties agree that the amortization period should reflect the anticipated time frame the new rates may be expected to be in effect.

C. **Rate Design Adjustment Mechanism.** The Settling Parties agree that if rates are redesigned by consensus of the parties pursuant to this agreement, Applicant will be permitted to recover a qualified revenue shortfall subject to the requirements and limitations stated below. For purposes of this agreement, a revenue shortfall means Applicant has billed in a 12-month period less than the revenue requirement established in the final order in this Cause, excluding fire protection and non-recurring charges (\$242,197). (Note: \$263,522 - \$16,618 - \$4,707 = \$242,197.) Subject to the requirements and limitations below, if Applicant experiences a revenue shortfall in any of the first four 12-month periods of operation under the new rate design, applicant shall be permitted to record a regulatory asset and implement recovery of the regulatory asset in its next rate case. The first 12-month period will begin with the first full billing month under the new rate design. Recovery shall be limited to a *return of*, not a *return on*, the qualified regulatory asset.

D. **Qualifications for Recovery of Revenue Requirement Shortfall.**

i. **Additional Cap.** Although any change in rate design should be revenue neutral, Applicant believes lowering the minimum charge could result in a decrease in revenues. The only purpose of the recovery mechanism created herein is to protect Applicant from that effect. As such, Applicant should not be permitted to recover more than what it has lost as a result of a lower minimum charge. The Settling Parties agree that the regulatory asset shall be no more than (1) the revenue shortfall or (2) the “cumulative decrease in total minimum charges billed” under the new rate design, whichever is lower.

ii. **Calculation of Additional Cap.** The “cumulative decrease in total minimum charges billed” shall be reduced to a dollar amount when the Settling Parties agree on a new lower minimum charge. The cumulative decrease shall be calculated by multiplying the

number of customers at the end of the test year by 12 months by the “dollar decrease in minimum charge.” The “dollar decrease in minimum charge” means the difference between the per customer minimum charges made effective by the final order in this Cause and the lower per customer minimum charges subsequently established by consensus of the Settling Parties.

iii. Revenue Shortfall Due to Reasons Other Than Lower Minimum Charge. Applicant may not employ this mechanism if, between the end of the test year and the end of regulatory asset accumulation period, Applicant’s customer count has decreased by more than 4%. In addition, Applicant may not employ this mechanism for recovery if its decrease in billings is found by the Commission in the next rate case to have been substantially due to reasons other than the change in rate design.

iv. Revenue Surplus Offset. If applicant records revenue shortfalls for one or more twelve month period but has had a revenue surplus in any of the other twelve month periods, Applicant shall be able to recover a regulatory asset only if and to the extent the shortfalls in the applicable twelve month periods exceed the revenue surplus in the other twelve month periods. (In other words, the creation of a regulatory asset shall depend on the net effect of billings for all four 12-month periods.) For this purpose, a revenue surplus means applicant has billed in the applicable twelve month period more than the revenue requirement established in this Cause.

v. Effect of Regulatory Asset. Recovery shall be limited to a *return of*, not a *return on*, the qualified regulatory asset. Applicant is not required to record or recover the regulatory asset. However, if Applicant does not implement the regulatory asset in its next rate case, any regulatory asset will cease to exist.

vi. Reporting. Within 60 days after the end of each 12 month period, Applicant shall advise the OUCC in writing whether and to what extent it has had a revenue shortfall or a revenue surplus.

vii. Recovery of Regulatory Asset. How the regulatory asset shall be recovered in rates shall be established more precisely in Applicant's next rate case. However, Applicant agrees the regulatory asset shall be recovered over a number of years that is no fewer than the reasonably expected life of the rates established in the next rate case or four years, whichever is greater. The Parties agree Applicant may extend recovery of the regulatory asset beyond the expected life of future rates to avoid rate shock. Applicant further agrees that any charge or revenue requirement to recover the regulatory asset will be eliminated upon full recovery of the regulatory asset and rates reduced accordingly.

8. **Water Loss**

Applicant agrees to continue to employ cost-effective solutions to reduce its water loss.

9. **Scope and Approval**

A. **No Admission/No Waiver.** Neither the making of this Settlement Agreement nor any of its provisions, including without limitation any provisions contained in exhibits to this Settlement Agreement, shall constitute in any respect an admission by any Settling Party in this or any other litigation or proceeding. This Settlement Agreement is solely the result of compromise in the settlement process and, except as provided herein, is without prejudice to

and shall not constitute a waiver of any position that any of the Settling Parties may take with respect to any or all of the issues resolved herein in any future regulatory or other proceedings.

B. **Precedential Effect.** Neither the making of this Settlement Agreement, nor the provisions thereof, nor the entry by the Commission of a Final Order approving this Settlement Agreement, shall establish any principles or legal precedent applicable to Commission proceedings other than those resolved herein. This Settlement Agreement shall not constitute nor be cited as precedent by any person or deemed an admission by any Settling Party in any other proceeding except as necessary to enforce its terms before the Commission, or any tribunal of competent jurisdiction.

C. **Authority to Stipulate.** The undersigned have represented and agreed that they are fully authorized to execute this Settlement Agreement on behalf of their designated clients, and their successors and assigns, who will be bound thereby, subject to the agreement of the Settling Parties on the provisions contained herein and in the attached exhibits.

D. **Privileged Communications.** The communications and discussions during the negotiations and conferences have been conducted based on the explicit understanding that said communications and discussions are or relate to offers of settlement and therefore are privileged and to be considered inadmissible. All prior drafts of this Settlement Agreement and any settlement proposals and counterproposals also are or relate to offers of settlement and are privileged.

E. **Support for Settlement.** The Parties believe the testimony already provided in this small utility case adequately supports a finding that revising the rate design to allow a lower minimum charge is reasonable and in the public interest subject to the process

established herein. Applicant and the OUCC shall request that the Commission issue a Final Order incorporating proposed order language agreed upon by the Settling Parties. Supportive testimony, if any, will be agreed-upon by the Settling Parties and offered into evidence without objection by any Settling Party and the Settling Parties hereby waive cross-examination of each other's witnesses.

F. **Acceptance in Entirety.** This Settlement Agreement is conditioned upon and subject to Commission acceptance and approval of its terms in their entirety, without any change or condition that is unacceptable to any Settling Party. The Settling Parties will support this Settlement Agreement before the Commission and request that the Commission accept and approve the Settlement Agreement. This Settlement Agreement is a complete, interrelated package and is not severable, and shall be accepted or rejected in its entirety without modification or further condition(s) that may be unacceptable to any Settling Party. The Settling Parties propose to submit this Settlement Agreement and evidence conditionally, and if the Commission fails to approve this Settlement Agreement in its entirety without any change or imposes condition(s) unacceptable to any adversely affected Settling Party, the Settlement Agreement and any supporting evidence may be withdrawn and the Commission will continue to proceed to a decision in the affected proceeding, without regard to the filing of this Settlement Agreement.

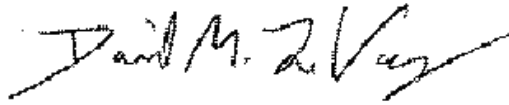
G. **Reconsideration/Appeal.** The Settling Parties shall not appeal or seek rehearing, reconsideration or a stay of any Final Order entered by the Commission approving the Settlement Agreement in its entirety without changes or condition(s) unacceptable to any Settling Party (or related orders to the extent such orders are specifically and exclusively implementing the provisions hereof) and shall not oppose this Settlement Agreement in the

event of any appeal or a request for rehearing, reconsideration or a stay by any person not a party hereto.

AGREED and **ACCEPTED** this 28th day of April, 2020.

AQUA INDIANA, INC.

**INDIANA OFFICE OF UTILITY
CONSUMER COUNSELOR**



Kari Bennett
President
Aqua Indiana

Daniel M. Le Vay
Dep. Consumer Counselor
Indiana Office of Utility Consumer Counselor