

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF) CAUSE NO. 43949 U
HEIR INDUSTRIES, INC. FOR A NEW)
SCHEDULE OF RATES AND CHARGES.) APPROVED: JUL 27 2011

BY THE COMMISSION:

Carolene Mays, Commissioner

Angela Rapp Weber, Administrative Law Judge

On September 10, 2010, Heir Industries, Inc., d/b/a Aqua Indiana, Inc., ("Heir") filed with the Indiana Utility Regulatory Commission ("Commission") an Application requesting authority to increase the monthly recurring flat rate it collects for sewage disposal service pursuant to Indiana Code § 8-1-2-61.5 and 170 IAC 14-1. Heir also requested that the Commission permit it to modify its non-recurring fees and charges. On September 27, 2010 and pursuant to 170 IAC 14-1-2(a), Heir filed proof of publication of the notice published describing the filing of the Application. Heir's September 27, 2010 filing also contained the text of a letter it sent to its customers describing the relief requested in the Application.

On October 27, 2010, the Office of Utility Consumer Counselor ("OUCC") requested that the Commission conduct a Field Hearing in this Cause. By a Docket Entry dated November 12, 2010, the Presiding Officers granted the OUCC's request. Pursuant to notice required by law, the Commission conducted a Field Hearing in this Cause on December 1, 2010 at the Borden Town Hall, 129 West Street, Borden, Indiana. Oral and written comments were received into the record at the Field Hearing.

On December 29, 2010, the OUCC filed its Report with the Commission as required by 170 IAC 14-1-4. The Report discussed and made several recommendations to the Commission concerning the relief requested by Heir. The Report also included written comments received by the OUCC subsequent to the December 1, 2010 Field Hearing. A Joint Stipulation and Settlement on Less than All Issues entered into by Heir and the OUCC ("Joint Stipulation") also was filed with the Commission on December 29, 2010. On January 21, 2011, Heir filed the rebuttal testimony of Mr. Thomas Bruns, Vice President and Regional Manager of Aqua Indiana, Inc. ("Aqua Indiana"), and Mr. Bobby D. Estep, Regional Director of Accounting for Aqua Indiana, in response to the OUCC's Report. On March 1, 2011, the parties filed a Joint Stipulation and Settlement Agreement ("Settlement Agreement"). The Settlement Agreement stated it resolves all of the matters at issue in this Cause.

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

1. Notice and Jurisdiction. The information presented by Heir in this Cause establishes that legal notice of the filing of the Application was published in accordance with law and that Heir gave proper notice of the nature and extent of the relief it is seeking. Therefore, due

legal, and timely notice of the matters in this proceeding was given and published as required by law. Further, Heir is an Indiana public utility pursuant to Indiana Code § 8-1-2-1. Heir provides rural sewer service to fewer than 5,000 retail customers and thus filed its Application to increase its rates and charges for service pursuant to Indiana Code § 8-1-2-61.5 and 170 IAC 14-1. The Commission has jurisdiction over the parties and subject matter of this Cause.

2. Heir's Characteristics. Originally formed in 1972 as Southern Enterprises Environment, Inc., Heir is an Indiana corporation and, since July 1, 2009, a subsidiary of Aqua America, Inc. ("Aqua America"), which is headquartered in Bryn Mawr, Pennsylvania. Heir holds a Certificate of Territorial Authority to provide sewage disposal service in Carr Township of Clark County, Indiana. As of December 31, 2009, Heir provides sewage disposal service to ninety-nine customers within Carr Township.

Heir is managed and operated by Aqua Indiana, which also is an Indiana corporation and subsidiary of Aqua America. In addition to Heir, Aqua Indiana manages and operates several other Aqua America-affiliated water and wastewater systems in Indiana. Aqua Indiana also provides contract operation and management of water and wastewater systems for both municipal and private sector clients in Indiana. Aqua Indiana has regional offices in Indianapolis and Fort Wayne.

Heir's collection system currently consists of approximately 22,100 feet of PVC pressure pipe and an extended aeration treatment plant with a capacity of 40,000 gallons per day. Operation and maintenance of Heir's facilities are the responsibility of operators certified by the Indiana Department of Environmental Management and other Aqua Indiana personnel based at Aqua Indiana's local operations office in southern Indiana and at the Indianapolis Division Office. The administrative functions necessary for Heir's operations, including customer service, billing, accounting, planning, and purchasing are handled in conjunction with other Aqua America business units.

3. Test Year. The test year selected for determining Heir's rates and charges was the twelve months ended June 30, 2010 adjusted for changes that were fixed, known, and measurable or likely to occur within one year of the end of the test year.

4. Relief Requested. The Commission approved Heir's current rates and charges in its June 28, 2006 Order in Cause No. 42990-U. Heir proposed in the Application to increase its monthly recurring flat rate for sewage disposal service to \$80 and thereby increase its annual operating revenue by \$50,998, or approximately 113%. Heir also proposed the addition of a New Tap Inspection Fee of \$175 to its non-recurring fees and charges.

5. OUCC's Report. The OUCC disagreed with Heir's proposed monthly recurring flat rate of \$80. Instead, the OUCC recommended that the Commission should only authorize Heir to implement a rate of \$69.59, which results in a revenue increase of \$38,511, or 85.58%.

The OUCC recommended a reduction in the value of Heir's plant in service shown in the Application to reflect a negative acquisition adjustment of \$68,026.50. The OUCC also proposed that the amount of that negative acquisition adjustment should be amortized as an above-the-line

expense at an annual rate of 2.5%, or \$1,701 annually. With respect to the weighted cost of capital, the OUCC proposed 8.125%, instead of the 8.375% reflected in the Application. The Report also recommended use of a gross revenue conversion factor different than that used by Heir. According to the Report, Heir had not used the correct rate of .118925% to calculate the Commission Fee. Also, the Report claimed Heir had incorrectly deducted the utility receipts tax for purposes of calculating its pro forma state income tax expense. Finally, the OUCC recommended that the Commission disallow a large portion of Heir's miscellaneous expense. Specifically, the OUCC argued that \$1,050.65 charged to Heir's Inter-company Account No. 775862, as well as \$5,418.95 charged to its Intra-company Account No. 775863, could not be documented and, as such, could not be considered to be fixed, known, and measurable and actually to have been incurred.

The OUCC supported Heir's proposed New Tap Inspection Fee of \$175. According to the Report, information provided by Heir showed that the proposed fee would cover administrative costs (\$27.50), field inspection costs (\$135), and costs associated with customer account back-up (\$13.75). The Report stated these costs were reasonable and consistent with other inspection fees assessed in the area.

The Report noted the parties had reached a settlement on less than all the issues presented in this Cause. Specifically, the parties reached an agreement concerning Heir's rate of return (8.125%), cost of equity (10.5%), cost of debt (5.750%), and capital structure (50% debt and 50% equity). Further, the parties agreed to a fair value rate base of \$201,591.

6. Heir's Response. Mr. Thomas M. Bruns testified on behalf of Heir in response to the OUCC's Report. Mr. Bruns agreed with the OUCC's recommendations concerning Heir's test year employee benefits expense, the deduction of utility receipts tax in the calculation of pro forma state income tax expense, and the revenue conversion factor.

Mr. Bruns disagreed, however, that the \$1,050.65 of Inter-company charges recorded in Account No. 775862 and the \$5,418.95 of Intra-company charges recorded in Account No. 775863 for the test year should be disallowed. According to Mr. Bruns, the costs and expenses reflected in those charges are documented; fixed, known, and measurable; and were actually incurred. Mr. Bruns stated that even though Heir failed to provide an adequate response to the OUCC's discovery request concerning those charges, Heir should still be permitted to recover them. He explained Heir's failure to provide the OUCC with information was brought to Heir's attention too late for it to resolve the problem before the OUCC filed its Report.

Mr. Bruns also explained the New Tap Inspection Fee of \$175 that Heir proposes to implement would not be collected from all existing customers, but will only be collected in those circumstances where a new tap is made to Heir's system. Therefore, the New Tap Inspection Fee typically will be applicable only to new customers and will not be collected from an existing customer unless that customer obtains a new tap.

Mr. Bobby D. Estep also testified on behalf of Heir in response to the OUCC's Report. Mr. Estep stated the OUCC used on its Schedule 6 a rate of 0.18925% to calculate the Commission fee instead of the correct rate of 0.118925%. Mr. Estep also provided support for

the recovery of the miscellaneous expenses the OUCC recommended that the Commission disallow.

According to Mr. Estep, Account No. 775862 reflects costs and expenses incurred by business units of Aqua America that are located outside of Indiana for services rendered to the Aqua America business units located within Indiana. The costs and expenses charged to that account primarily reflect an allocation of regional management services from Aqua Illinois, Inc., and to a lesser extent allocated charges from a regional controller, regional financial analyst, and other personnel. Mr. Estep provided Petitioner's Exhibits BDE-2, BDE-3, and BDE-4, which depict the nature of the costs and expenses charged to Account No. 775862, the specific portion of those costs and expenses allocated to Heir, and how those allocations were calculated for each month of the test year. Mr. Estep provided similar information concerning the charges to Intra-company Account No. 775863 in Petitioner's Exhibits BDE-5, BDE-6, and BDE-7. Unlike the charges made to Account No. 775862, Mr. Estep stated the charges to Intra-company Account No. 775863 reflect costs and expenses incurred by the Aqua America business units operating within the southern and central portions of Indiana for management services.

7. **Settlement Agreement.** The Settlement Agreement, which incorporated the Joint Stipulation by reference, stated it resolves all of the issues before the Commission in this Cause, including, without limitation, the following:

A. Test Year. The period used by Heir and the OUCC for determining Heir's revenues and expenses recently incurred in providing sewer disposal service to its customers was the twelve months ended June 30, 2010. With adjustments for changes that are fixed, known, and measurable, the parties agreed the test year is sufficiently representative of Heir's normal operations to provide reliable information for ratemaking purposes.

B. Rate Base. For purposes of this proceeding only, the parties agreed the net original cost depreciated value of Heir's utility properties used and useful for the convenience of the public as of June 30, 2010 is \$153,274. The parties agreed this amount is also the fair value of Heir's properties in service and used and useful for the convenience of the public as of June 30, 2010. Further, the parties added to that value Heir's \$42,780 additional investment in utility plant since the end of the test year, plus \$5,893 of working capital, for a total of \$201,947 for Heir's fair value rate base as depicted on Joint Settlement Exhibit 2.

C. Allowed Return. The parties agreed a rate of return of 8.125%, which reflects a common equity cost rate of 10.5%, will adequately and fairly compensate Heir for its investments, while maintaining Heir's financial viability.

D. New Tap Inspection Fee. Heir's proposed New Tap Inspection Fee of \$175, according to the parties, is fair, just, and reasonable, and should be approved by the Commission.

E. Revenues at Present Rates. Under its present rates and charges, Heir's pro forma total operating revenue is \$45,339 and pro forma net operating income is (\$7,702), as shown in Joint Settlement Exhibit 2. According to the Settlement Agreement, that amount of net

operating income is insufficient to provide a fair return on the fair value of its properties used and useful in providing sewer service for the convenience of the public, and is therefore unjust and unreasonable and should be increased.

F. Allowed Increase. According to the parties and as shown on Joint Settlement Exhibit 2, Schedules 1 and 4, Heir's current monthly recurring flat rate should be increased to \$72.02 so as to produce additional operating revenues of \$41,429 and, together with other revenues, produce total pro forma operating revenues of \$86,828. \$41,429 in additional operating revenues represents a 92.06% increase over that produced under Heir's present flat and measured rates. It also reflects the effect of the increased revenue on federal and state income taxes, Indiana utility receipts tax, and the Commission Fee.

G. New Schedule of Rates and Charges. A proposed schedule of rates and charges is set forth in Joint Settlement Exhibit 3. The parties agreed the monthly recurring flat rate, non-recurring rates, charges, fees, and other terms provided for in the proposed schedule attached as Joint Settlement Exhibit 3 are sufficient to produce the results described in Paragraph 7(F) above and are fair, just, reasonable, and non-discriminatory.

H. Rate Case Expense. The Settlement Agreement provided that it may be necessary for Heir to file a new rate case before it has recovered all of the agreed-upon rate case expense of \$25,000, which is to be amortized and recovered over six years. Consequently, in order to avoid adversely affecting Heir's financial position through a write-off of the unrecovered rate case expense, any portion of the rate case expense allowed in this case that is not expected to be recovered before the Commission issues an Order in Heir's next general rate case (whether filed under Indiana Code § 8-1-2-61 or Indiana Code § 8-1-2-61.5) should be added to and treated for all purposes as part of the rate case expense allowed in that next rate case.

I. Future Rate Adjustment. According to the Settlement Agreement, it is possible that the six-year amortization period established for rate case expense in this Cause will expire prior to Heir filing its next general rate case, and Heir will recover all of the agreed-upon rate case expense of \$25,000. If this occurs, the parties agreed Heir should reduce the monthly recurring flat rate shown on Joint Settlement Exhibit 3 to \$68.42. Heir also should file a new schedule of rates and charges for approval by the Commission that shows the reduced monthly recurring flat rate of \$68.42 no later than thirty days prior to the date Heir expects to fully recover the agreed-upon rate case expense shown on Joint Settlement Exhibit 2, or expiration of the six-year amortization period established for rate case expense in this Cause, whichever is earlier. The effective date for that new schedule of rates and charges should be as close as practicable to the date upon which Heir recovers all of the agreed-upon rate case expense shown on Joint Settlement Exhibit 2.

J. Effect of Settlement. The parties agreed the terms and conditions set forth in the Settlement Agreement represent a fair, reasonable, and just resolution of all the issues in this Cause. The Settlement Agreement further provided that it shall not be construed 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 before any court of competent

jurisdiction on these particular issues.

8. **Commission Discussion and Findings.** The Commission begins with a general discussion concerning settlement agreements. 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 also require that settlements be supported by probative evidence. 170 IAC 1-1.1-17(d).

This Cause has been brought before the Commission pursuant to Indiana Code § 8-1-2-61.5 and 170 IAC 14-1, which are designed to provide qualifying small utilities a speedy and cost-effective means to achieve needed rate relief. The agreed resolution of the issues reflected in the Settlement Agreement, a copy of which is attached to this Order and incorporated by reference, promotes those goals. The Commission finds that the Settlement Agreement should be approved but with one modification.

Pursuant to the Settlement Agreement and the evidence presented, the parties agreed to an increase of 92.06% in Heir’s monthly recurring flat rate, subject to downward adjustment in the future as described below. However, the Commission is concerned with the amount of rate case expense agreed to by the parties. The parties settled on rate case expense of \$25,000 to be recovered in rates, of which, more than \$18,000 is associated with legal fees.¹ The Commission believes that legal costs associated with a small utility filing should be minimal, or even non-existent, given that the small utility filing procedure does not require a legal consultant unless a Field Hearing is requested. While a Field Hearing was held in this case, the Commission finds that \$18,488 in legal fees is unreasonable and not in the public interest.

To determine the appropriate amount of legal expense, the Commission reviewed the legal billing statements to determine the hourly fee and time spent in preparation of the field hearing and to prepare the Settlement Agreement, which included a Joint Proposed Order. Based on this analysis, the Commission finds that twenty hours of legal service should be approved and recovered in rates. This change reduces the agreed to annual rate case expense adjustment from \$4,167 (\$25,000/six-year amortization period = \$4,167 per year) to \$1,919, for a total of \$11,512 (\$11,512/six-year amortization period = \$1,919 per year).² The Commission also notes Heir’s proposed rate case expense is more than five times higher than the highest per-customer cost of

¹ Rate case expense pursuant to the Settlement Agreement is comprised of \$18,488 in legal fees, \$6,501 in accounting fees, and \$11 in miscellaneous costs for a total of \$25,000.

² Rate case expense pursuant to the Commission’s modification is comprised of \$5,000 in legal fees, \$6,501 in accounting fees, and \$11 in miscellaneous costs for a total of \$11,512.

the five most recent wastewater utilities' Small Utility Rate Applications (excluding any Petitions from Aqua Indiana companies) filed before the Commission.

With the modification made herein, the Commission finds the Settlement Agreement is reasonable, supported by the evidence of record, and in the public interest. As a result, Heir's monthly recurring flat rate will increase by 86.96% to \$70.11 and will provide Heir with an opportunity to earn additional operating revenue of \$39,132, calculated as follows:

Rate Base	\$201,947
Effective Rate of Return	8.125%
Resulting Net Operating Income	16,408
Less: NOI Under Present Rates	(6,367)
Additional NOI Required	22,775
Gross Revenue Conversion Factor	1.718299
Recommended Revenue Increase	\$39,132

An increase of \$39,132 in operating revenue is fair and reasonable and will provide Heir an opportunity to realize an acceptable level of operating income, earn a fair return, and not impede its ability to obtain reasonable additional capital necessary to enable it to render adequate, reliable, and safe sewage disposal service.

Regarding the possible future rate adjustment described in Paragraph 7(I), the Commission finds Heir's monthly flat rate should be reduced to \$68.42. Further, Heir should file a new schedule of rates and charges for approval by the Commission that shows the reduced monthly flat rate of \$68.42 no later than thirty days prior to the date Heir expects to fully recover the \$11,512 in rate case expense approved in this case.

The Commission finds, however, with regard to future use, citation, or precedent of the Settlement Agreement, our approval of the terms of the Settlement Agreement should be construed in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434 (approved March 19, 1997).

9. Depreciation. The Commission notes that the accumulated depreciation in Heir's last rate case in Cause No. 42990-U was found to be \$39,568 based on a test year ending December 31, 2004. Multiplying the Commission's 2.5% composite depreciation rate times Heir's annual depreciable plant for 2005 through June 30, 2010 (the test year in this Cause), the Commission believes Heir's accumulated depreciation balance should be more than \$67,000. Based on Heir's annual reports, it appears that Heir increased its accumulated depreciation balance by only \$800 per year from 2005 through 2007. Therefore, while the Commission believes it is in the public interest to approve the rate base agreed to by the parties in this instance, the Commission directs Heir to restate its balance sheet starting with its 2011 Annual Report filing to include accumulated depreciation using the Commission's Order in Cause No. 42990-U as a starting point and subsequent depreciation expense for each year thereafter using the Commission's composite depreciation rate of 2.5%.

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

1. The Settlement Agreement, together with the Joint Stipulation, are hereby accepted and approved with the modification described in Paragraph 8.

2. Heir is hereby authorized to increase its monthly recurring flat rate to \$70.11 in order to have the opportunity to earn additional operating revenue of \$39,132 from the monthly recurring flat rate collected for service provided by its sewage disposal utility.

3. Heir is hereby authorized to modify its non-recurring fees and charges in order to implement a New Tap Inspection Fee of \$175.

4. Heir shall file with the Water/Wastewater Division of the Commission a new schedule of rates and charges consistent with Paragraph 8. Such schedule of rates and charges shall be effective on and after the date of approval and in accordance with its terms.

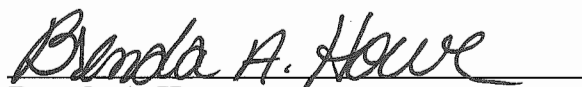
5. Heir shall adjust the monthly recurring flat rate of \$70.11 approved above to the extent and in the manner described in Paragraph 7(I) and Paragraph 8.

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

ATTERHOLT, BENNETT, LANDIS, MAYS AND ZIEGNER CONCUR:

APPROVED: JUL 27 2011

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



Brenda A. Howe

Secretary to the Commission

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STATE OF INDIANA

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INDIANA UTILITY REGULATORY COMMISSION

INDIANA UTILITY
REGULATORY COMMISSION

IN THE MATTER OF PETITION OF HEIR)
INDUSTRIES, INC. d/b/a AQUA INDIANA,)
INC. FOR NEW SCHEDULE OF RATES)
AND CHARGES FOR SEWER DISPOSAL)
SERVICE WITHIN CLARK COUNTY,)
INDIANA)

CAUSE NO. 43949-U

JOINT STIPULATION AND SETTLEMENT AGREEMENT

On September 10, 2010, Heir Industries, Inc., d/b/a Aqua Indiana, Inc., ("Heir") filed its application for a change in rates and charges pursuant to the provisions of Indiana Code § 8-1-2-61.5 and 170 IAC 14-1 (the "Application"). Specifically, Heir requested in the Application authority to implement an approximately 113% increase in its monthly recurring flat rate for sewer service, as well as to revise its non-recurring charges to implement a New Tap Inspection Fee of \$175.

On December 29, 2010, the Indiana Office of Utility Consumer Counselor ("OUCC") filed a report with the Commission as required by 170 IAC 14-1-4 (the "Report"). The Report discussed and made several recommendations to the Commission concerning the relief requested by Heir. Overall, the Report recommends that the Commission only approve an 85.58% increase in Heir's recurring monthly flat rate. It did, however, agree with Heir's request to revise its non-recurring charges to implement a New Tap Inspection Fee of \$175.

A Joint Stipulation and Settlement on Less than All Issues entered into by Heir and the OUCC ("Joint Stipulation") also was filed with the Commission on December 29,

2010. The Joint Stipulation reflected the agreement of Heir and the OUCC (collectively, the "Parties") on some of the matters at issue in this Cause.

Heir filed on January 21, 2011, the verified written testimony of Mr. Thomas Bruns and Mr. Bobby D. Estep as its response to the Report allowed by 170 IAC 14-1-4. Heir's response identified the OUCC's recommendations which Heir accepted for purposes of this proceeding, including those identified in the Joint Stipulation, and those recommendations with which it continued to disagree.

Following the filing of Heir's response to the Report, the Parties entered into negotiations and reached an agreement addressing all matters at issue in this Cause. The agreement reached by the Parties is as follows:

1. Incorporation of Joint Stipulation. The Joint Stipulation, a copy of which is attached as Joint Settlement Exhibit 1, is incorporated into this Agreement by reference as if fully set forth herein.

2. Revenues at Present Rates. As shown on Joint Settlement Exhibit 2, Schedule 4, Heir's pro forma total operating revenues and pro forma net operating income under its present rates and charges are \$45,399 and (\$7,702) respectively. That amount of net operating income is insufficient to provide a fair return on the fair value of its properties used and useful in providing sewer service for the convenience of the public, and is therefore unjust and unreasonable and should be increased.

3. Allowed Increase. As shown in Joint Settlement Exhibit 2, Schedules 1 and 4, Heir's current monthly recurring flat rate should be increased to \$72.02 so as to produce additional operating revenues of \$41,429 and, together with other revenues, produce total pro forma operating revenues of \$86,828. The amount of the additional

operating revenues (i.e., \$41,429) represents a 92.06% increase over that produced under Heir's present monthly recurring flat rate and reflects the effect of the increased revenue on federal and state income taxes, Indiana gross receipts tax and the Commission's fee. Giving appropriate weight to the need for Heir to discharge its public duties and to earn a return commensurate with that earned by enterprises of corresponding risk, a monthly recurring flat rate estimated to produce, together with other revenues, operating revenues of \$86,828 is just and fair and should allow Heir the opportunity to earn a reasonable return on its property dedicated to providing sewer service to the public.

4. New Schedule of Rates and Charges. A proposed schedule of rates and charges is set forth in Joint Settlement Exhibit 3. The monthly recurring flat rate, non-recurring rates, charges, fees and other terms provided for in the proposed schedule attached as Joint Settlement Exhibit 3 are sufficient to produce the results described in Paragraph 3 above and are each otherwise fair, just, reasonable and non-discriminatory.

5. Other Covenants of the Parties.

A. Unrecovered Rate Case Expense. It may be necessary for Heir to file its next general rate case (whether filed under Ind. Code § 8-1-2-61 or Ind. Code § 8-1-2-61.5) before it has recovered all of the agreed-upon rate case expense shown on Joint Settlement Exhibit 2, Schedule 6, page 2 of 4, i.e., \$25,000, which the Parties have agreed should be amortized and recovered over six (6) years. Consequently, to avoid adversely affecting Heir's financial position through a write-off of any unrecovered rate case expense, any portion of the rate case expense allowed in this Cause that is not expected to be recovered by the time the Commission issues a final order in Heir's next general rate case, shall be added to and treated for all purposes as part of the rate cases

expense allowed in that next general rate case. To that end, prior to the filing of Heir's case-in-chief in its next general rate case, or application in the case of a small utility rate case, the parties hereto shall determine by agreement the estimated time in which the Commission is expected issue a final order. In the absence of any such agreement, for purposes of determining what portion of unamortized rate case expense will carry forward, the parties will assume continued recovery for six months from the date Petitioner filed its case-in-chief or its complete application, as the case may be.

B. Future Rate Adjustment. It is possible that the six (6) year amortization period established for rate case expense in this Cause will expire prior to Heir filing its next general rate case and Heir will have recovered all of the agreed-upon rate case expense, i.e., \$25,000. In the event it does, Heir shall reduce the monthly recurring flat rate shown on Joint Settlement Exhibit 3 to \$68.42 in order to reflect its full recovery of the rate case expense allowed in this Cause. Heir also shall file a new schedule of rates and charges for approval by the Commission that shows the reduced monthly recurring flat rate of \$68.42 no later than thirty (30) days prior to the date Heir expects to fully recover the agreed-upon rate case expense shown on Joint Settlement Exhibit 2 or expiration of the six (6) year amortization period established for rate case expenses in this Cause, whichever is earlier. The effective date for that new schedule of rates and charges shall be as close to practicable to the date upon which Heir would recover all of the agreed-upon rate case expenses shown on Joint Settlement Exhibit 2.

C. Waiver of Hearing and Admission of Evidence. The Parties hereby waive any right they may have to request a public hearing in this Cause. If an evidentiary hearing is held, the OUCC stipulates to the admission into evidence of the Application, as

well as the verified written testimony filed by Heir on January 21, 2011, and waives any cross-examination of Heir's witnesses. Similarly, Heir stipulates to the admission into evidence of the Report and waives any cross-examination of the OUCC's witnesses at any evidentiary hearing in this Cause. The Parties shall jointly sponsor this Settlement Agreement and Joint Settlement Exhibits 1 through 4 at any evidentiary hearing in this Cause.

6. Mutual Conditions on Settlement Agreement. The terms and conditions set forth in this Settlement Agreement are supported by the evidence and based on the Parties' independent review of the evidence, represent a fair, reasonable and just resolution of all the issues in this Cause, subject to their incorporation in a Final Order in the form attached as Joint Settlement Exhibit 4 without modification or further condition, which may be unacceptable to either Party. If the Commission does not approve this Settlement Agreement in its entirety and incorporate it into a Final Order as provided above, it shall be null and void and deemed withdrawn, unless otherwise agreed to in writing by the Parties. The Parties represent that there are no other agreements in existence between them relating to the matters covered by this Settlement Agreement.

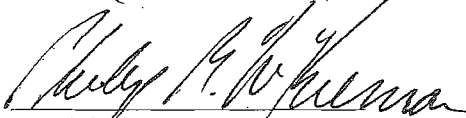
7. Non-Precedential. As a condition precedent to the Settlement Agreement, the Parties condition their agreement on the Commission providing assurance in the Final Order issued herein that it is not the Commission's intent to allow this Settlement Agreement or the Final Order approving it to be used as an admission or as a precedent against the signatories hereto except to the extent necessary to enforce the terms of the Settlement Agreement. This Settlement Agreement shall not cited as precedent by either party against the other or be deemed an admission by any Party in any other proceeding

except as necessary to enforce its terms before the Commission, or before any court of competent jurisdiction on these particular issues. 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 either of the Parties may take with respect to any or all of the items resolved herein in any future regulatory or other proceedings and, failing approval by the Commission, shall not be admissible in any subsequent proceedings.

8. 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 who will be bound thereby.

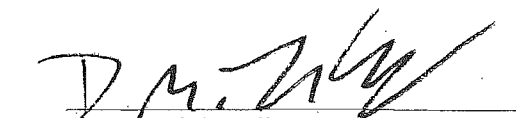
Respectfully submitted,

HEIR INDUSTRIES, INC.,
d/b/a AQUA INDIANA, INC.



By: Philip B. McKiernan
Attorney for Heir Industries
Inc., d/b/a Aqua Indiana, Inc.

INDIANA OFFICE OF UTILITY
CONSUMER COUNSELOR



By: Daniel M. LeVay,
Its Attorney