

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF)
BROWN COUNTY WATER UTILITY, INC., OF)
MORGANTOWN, INDIANA, FOR (1) THE)
AUTHORITY TO INCREASE ITS RATES AND)
CHARGES FOR WATER SERVICE, (2) FOR) CAUSE NO. 45210
APPROVAL OF A COST OF SERVICE STUDY)
AND RATE DESIGN, AND (3) FOR APPROVAL)
OF A NEW SCHEDULE OF RATES AND)
CHARGES FOR WATER SERVICE.)

FILED
September 11, 2019
INDIANA UTILITY
REGULATORY COMMISSION

SUBMISSION OF
STIPULATION AND SETTLEMENT AGREEMENT

Comes now Brown County Water Utility, Inc., (“Petitioner”), by counsel, and submits the Stipulation and Settlement Agreement entered into by Petitioner, the Town of Nashville, Indiana, and the Indiana Office of Utility Consumer Counselor in this Cause.

Respectfully submitted,

/s/ Peter Campbell King
Peter Campbell King
Attorney for Petitioner

/s/ Mark W. Cooper
Mark W. Cooper
Attorney for Petitioner

Certificate of Service

The undersigned hereby certifies that the foregoing Submission was served this 11th day of September, 2019, by electronic mail and/or U.S. mail, postage prepaid, upon the following counsel of record:

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STIPULATION AND SETTLEMENT AGREEMENT

Brown County Water Utility, Inc. (“Petitioner”), Town of Nashville, Indiana (“Nashville”), and the Indiana Office of Utility Consumer Counselor (“OUCC”), being all of the parties to this Cause (collectively called the “Parties”), Stipulate and Agree for the purposes of resolving the issues in this Cause to the terms and conditions set forth below (which terms and conditions are collectively referred to herein as the “Settlement”).

A. Procedural Agreements of the Parties.

1. Bifurcation of this Cause. The Parties have agreed to bifurcate this Cause to separate Petitioner’s revenue requirement request (Phase 1) from its rate design request (Phase 2).

Although the Parties agree that bifurcating the issues in this Cause is the best course of action, the Parties recognize Petitioner’s need for rate relief without further delay, and to that end, have agreed to the Phase 1 across-the-board increase. In the event that the rate design issue is not dismissed by agreement of the Parties or otherwise resolved, the Parties agree that the Phase 2 order shall apply the Commission-approved rate design to the Phase 1 agreed increase.

2. Federal Court Case. Petitioner and Nashville are involved in litigation currently pending in the Federal Court under Cause No. 1:17-cv-02134-TWP-TAB (“Federal Case”). Petitioner and Nashville have made several attempts to resolve the Federal Case but have not yet

been able to reach resolution. Some of the potential resolutions of the Federal Case involve activities and events which would require Commission approval and the modification of Petitioner's rates and charges approved in Phase 1 of this Cause.

If, prior to November 12, 2019, Phase 2 prefilings, Petitioner and Nashville reach a resolution of the Federal Case, which requires Commission approval and/or a modification of Petitioner's rates and charges, the Parties agree as follows:

- a. Within seven (7) days of reaching a formal resolution of the Federal Case, Petitioner and Nashville will so notify the Commission and will request an Attorneys' Conference in this Cause to discuss procedural matters pertinent to Commission approvals required to effectuate the resolution.
- b. The Phase 1 agreed rate increase will proceed under the schedule established by the Commission's August 27, 2019, Docket Entry in this Cause.
- c. The Phase 1 rate increase will be interim subject to modification by the Commission in conjunction with any Commission approvals required by the resolution of the Federal Case.

B. Petitioner's Rate Increase.

1. Petitioner's Test Year Operating Revenue. The Parties stipulate and agree that Petitioner's adjusted test year operating revenue at present rates is \$3,477,491.
2. Petitioner's Revenue Requirement. The Parties stipulate and agree that Petitioner's adjusted pro forma revenue requirement is \$3,610,557, and is calculated as follows:

Operating Expenses	\$ 2,419,624
Extensions and Replacements	357,534
Working Capital	0
Debt Service	721,156
Debt Service Reserve	<u>120,898</u>
 Total Revenue Requirements	 3,619,212
Less: Interest Income	(7,105)
- Farm Rental Income	<u>(1,550)</u>
 Net Revenue Requirements	 \$ 3,610,557

3. Petitioner's Authorized Rates. The Parties stipulate and agree that Petitioner's current rates and charges which provide annual adjusted revenues of \$3,477,491 are insufficient to satisfy Petitioner's annual pro forma adjusted revenue requirement of \$3,610,557 and Petitioner's current rates are, therefore, unjust and unreasonable. The Parties further stipulate and agree that Petitioner shall be authorized to increase its rates and charges for water service, across-the-board, so as to produce annual revenues of \$3,610,730 which is an increase of \$133,239, over annual adjusted present rate revenues of \$3,477,491.

C. Other Agreements of the Parties.

1. The Commission's November 18, 2015, Order in Cause No. 44648, Petitioner's last rate case, approved a Stipulation and Settlement Agreement. Paragraph D, 4 of that Settlement Agreement reads as follows:

4. Petitioner shall create and maintain dedicated restricted accounts for funds collected for both Storage Tank Inspection and Maintenance, and Well and well Pump Maintenance. Petitioner shall deposit all funds collected for those purposes into the appropriate account. Petitioner shall annually deposit no less than \$71,500 into the Storage Tank Inspection and Maintenance Account, and Petitioner shall set up and annually deposit not less than \$49,000 into the Well and Well Pump Maintenance Account. The funds in these accounts shall be restricted to use for the purposes intended, except, however, funds in these restricted accounts may be used to pay debt service when due if other funds are not available for the payment of debt service. Petitioner shall

report annually, at the time of the filing of its IURC Annual Report, on the activities of these accounts to the IURC and the OUCC. However, if at any time Petitioner is required to invade either of these restricted accounts for the payment of debt service, Petitioner shall report such event to the IURC and the OUCC within fourteen (14) days of the event.

See Settlement Agreement in Cause 44648, pgs. 8-9.

As a part of the Settlement Agreement in this Cause, the Parties have agreed to a new Well and Well Pump Maintenance annual requirement for Petitioner of \$35,000. The Parties stipulate and agree that the annual amount to be deposited by Petitioner into its Well and Well Pump Maintenance Account shall be amended from \$49,000 to \$35,000.

D. The Settlement and Use of the Settlement.

1. The Settlement. The Parties shall support this Settlement before the Commission and request that the Commission expeditiously accept and approve the Settlement. If the Settlement is not approved by the Commission without amendment, the Parties agree that the terms thereof shall not be admissible in evidence or in any way discussed in any proceeding. Further, the concurrence of the Parties with the terms of the Settlement is expressly predicated upon the Commission's approval of the Settlement without amendment. If the Commission alters the Settlement in any material way or imposes any additional obligations on Petitioner, the Settlement shall be deemed withdrawn unless that alteration is unanimously consented to by the Parties in writing. In that event, an informal attorneys' conference will be promptly requested wherein a procedural schedule will be fixed for the processing of the balance of this Cause. The Parties expressly reserve all of their rights, including the right to present appropriate evidence, in the event this Cause is required to be litigated.

The Petitioner has prefiled its direct testimony and the Parties have prefiled testimony in support of this Settlement, all of which shall be offered into evidence without objection and the Parties hereby waive cross-examination. The Parties agree that Petitioner's evidence and the

evidence in support of this Settlement constitutes substantial evidence to support this Settlement and provides an adequate evidentiary basis upon which the Commission can make any findings of fact or conclusions of law necessary for the approval of this Settlement, as filed. The Parties shall prepare and file an agreed proposed order with the Commission as soon as possible after the hearing in this Cause.

2. Use of the Settlement. If the Settlement is approved by the Commission the Parties agree that the terms of the Settlement are intended to represent a resolution by compromise of the issues in this Cause. The Parties further agree that the provisions of the Settlement may never be deemed an admission by any of the Parties, may never be used as substantive precedent in future Commission proceedings and may never be used against any of the Parties in subsequent regulatory or other Commission proceedings, except to the extent necessary to enforce the Settlement.

The Parties stipulate and agree that the Settlement 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 issue or item whether or not resolved herein, in any future regulatory or other proceeding.

E. Authority to Execute.

The undersigned have represented and agreed that they are fully authorized to execute this Stipulation and Settlement Agreement on behalf of the designated Parties who will be bound thereby.

Brown County Water Utility, Inc.

By: Ben Phillips, President
Ben Phillips, Petitioner's Board President

Date: 9/10/19

ATTEST:

By: Roger Hickey
Roger Hickey, Petitioner's Secretary

Date: 9-10-19

Indiana Office of Utility Consumer
Counselor

By: Scott Franson
Scott Franson, Deputy Consumer Counselor

Date: 9/11/19

Town of Nashville, Indiana

By: Jeffery A. Earl
Jeffery A. Earl, Counsel for Nashville

Date: 9/11/19