Commissioner	Yes	No	Not Participating
Huston	√		
Bennett	√		
Freeman	√		
Veleta	√		
Ziegner	√		

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF THE CITY OF EAST CHICAGO, INDIANA FOR AUTHORITY TO ISSUE BONDS, NOTES, OR OTHER OBLIGATIONS FOR AUTHORITY TO INCREASE ITS RATES AND CHARGES FOR WATER SERVICE, AND FOR APPROVAL OF NEW SCHEDULES OF WATER RATES AND CHARGES.	)	**CAUSE NO. 45827** **APPROVED: AUG 16 2023**

<u>ORDER OF THE COMMISSION</u>

Presiding Officers:
David E. Ziegner, Commissioner
Jennifer L. Schuster, Senior Administrative Law Judge

On December 12, 2022, the City of East Chicago, Indiana ("Petitioner" or "East Chicago") filed its Verified Petition with the Indiana Utility Regulatory Commission ("Commission"). On January 25, 2023, the City of East Chicago Industrial Group ("Industrial Group") filed a Petition to Intervene, which was granted by docket entry on February 2, 2023. The Office of Utility Consumer Counselor ("OUCC") and Industrial Group did not file direct testimony because the parties reached a settlement before the testimony was due.

The Commission held a field hearing in this Cause on March 6, 2023 at 6 p.m. Central time at the East Chicago Common Council Chambers, East Chicago City Hall, Second Floor, 4525 Indianapolis Boulevard, East Chicago, Indiana.

On April 13, 2023, the parties notified the Commission that a settlement in principle had been reached. The parties filed their settlement testimony and exhibits and a Joint Stipulation and Settlement Agreement (the "Settlement Agreement") on April 28 and May 3, 2023.

The Commission conducted an evidentiary hearing on July 24, 2023 at 10:30 a.m. in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Petitioner, the OUCC, and the Industrial Group appeared and participated at the hearing, and the prefiled evidence of the parties, including the Settlement Agreement, were admitted into evidence without objection.

Based upon applicable law and evidence of record, the Commission now finds as follows:

1. <u>Commission Jurisdiction and Notice</u>. Petitioner is a municipally owned utility as defined in Ind. Code § 8-1-2-1(h). Due, legal, and timely notice of the field hearing and evidentiary hearing in this Cause was given and published by the Commission as required by law. Under Ind. Code § 8-1.5-3-8, the Commission has jurisdiction over changes to East Chicago's water utility rates and charges. In addition, Ind. Code § 8-1.5-2-19 requires Commission approval before East Chicago may issue debt to fund improvements to the water utility when water utility assets or revenues are pledged as collateral for such debt as East Chicago has proposed here. Therefore, the Commission has jurisdiction over the parties and the subject matter of this proceeding.

2. Petitioner's Characteristics. Petitioner is a municipality that owns and operates plant and equipment in Indiana for the production, transmission, delivery, and furnishing of water to the public within and around the City of East Chicago, Indiana. Petitioner serves a population of approximately 30,000 with approximately 7,000 customers. Petitioner's existing schedule of water rates and charges were approved by the Commission in Cause No. 44826 on April 26, 2017.

3. Relief Requested. In this Cause, Petitioner sought authority to increase its rates by approximately 102.22% over three phases. Petitioner also requested permission to issue new waterworks revenue bonds through the Drinking Water State Revolving Fund ("SRF") in a principal amount not to exceed $30 million and that will not exceed 35 years to be issued in multiple series.

4. Test Year. The test year to be used for determining Petitioner's actual and pro forma operating revenues, expenses and operating income under present and proposed rates is the 12-month period ended March 31, 2020, adjusted for changes that are fixed, known, and measurable for ratemaking purposes and that will occur within 12 months following the end of the test year. The Commission finds that the test year selected is sufficiently representative of Petitioner's normal operations to provide reliable data for ratemaking purposes.

5. The Parties' Evidence.

A. East Chicago's Direct Evidence. Winna Guzman, Director of the City of East Chicago's Water Department ("Water Department"), testified about the Water Department's planned capital projects, proposed rate increase, and lead service line replacement efforts. She stated that East Chicago's rates are currently the eighth lowest average monthly rates among the regulated water utilities in Indiana, and, even with the requested rate increase, average monthly bills for a customer using 4,000 gallons per month will still be less than $36/month after Phase III, which means that East Chicago's rates will be in the middle of the range of regulated water utilities' rates in Indiana. She testified that the Water Department has been losing money on its water service for a number of years, subsidizing it by other means, and a rate increase is seriously needed.

Ms. Guzman testified that necessary capital improvement projects, increased maintenance and repairs due to an aging distribution system, and increased costs for goods and services such as materials, chemicals, and salaries, due to supply and demand and inflationary pressures, are leading to increased expenses of the Water Department. She discussed 17 vacant full-time and part-time positions that the Water Department is actively working to fill. She testified that the Water Department has outstanding interfund loans totaling $5,000,000 and other appropriations from the City of East Chicago totaling $3,050,000, which were used to cover some of the Water Department's expenses not covered by the current rates. According to Ms. Guzman, this shortfall occurred because operating receipts came in roughly 16.7% below what was anticipated in the prior rate case and operating disbursements are approximately 19.2% higher than the previous rate case anticipated. Ms. Guzman also testified that the Water Department would need to take out a bond anticipation note ("BAN") to cover preliminary engineering expenses on the capital improvement projects.

Ms. Guzman gave more detail on some of East Chicago's expenses and capital projects. She testified that East Chicago had some continuing maintenance expenses on its 1965-built conventional plant ("Conventional Plant") to keep the systems operational in case of an emergency and to mothball the facility until it is ready to sell or demolish. She testified that East Chicago was fully served by the 2011-built membrane filtration plant ("Membrane Plant"), but the city had not yet closed the Conventional Plant because of the cost of demolition and potential environmental concerns with decommissioning.

Ms. Guzman discussed the Water Department's capital projects and noted that the details on these projects were addressed in Mr. Caruso's testimony. She explained that the Water Department intends to seek funds to finance these projects by issuing revenue bonds through the State Revolving Fund ("SRF") Drinking Water Loan Program.

Ms. Guzman gave additional details about the lead service line replacement ("LSLR") project. She testified that the Water Department had already completed Phase I and a majority of Phase II of the project. The Water Department replaced lead service lines at 615 houses since starting the project in 2017. When the funding from the previous SRF loan was virtually exhausted, the Water Department ended the project. Ms. Guzman testified that the Water Department intended to start up the project again upon receiving funding from the SRF program and proposes to cover all costs associated with LSLR, including the entire length of the service line from the main into the residence and all necessary appurtenances. She stated that lead service line replacement would be cost prohibitive for many residents, and the federal funds being administered by the SRF program require utilities to pay for the entire cost of replacement. Ms. Guzman explained that, even though East Chicago's lead levels are below the federal actionable level, the city considers the program important to protect its residents' health and well-being. She provided additional details about logistics of the LSLR project and clarified that the project does not change the ownership of the current or future service lines—ownership of the affected service lines will continue to remain with the property owner who will be responsible for any future repairs.

Ms. Guzman also testified regarding East Chicago's maintenance and repair efforts, including leak detection programs, water loss audits, and fire hydrant monitoring, all of which East Chicago intends to continue. She explained that East Chicago is reviewing and implementing the recommendations by the contractors performing these audits and monitoring efforts.

John Caruso, a professional engineer employed by Christopher B. Burke Engineering, Ltd. ("CBBEL"), serves as the engineering consultant for three East Chicago boards: the Board of Water Works, the Sanitary Board, and the Stormwater Board. Like Ms. Guzman, Mr. Caruso testified regarding the closure of the Conventional Plant and confirmed that the Membrane Plant is capable of providing all of East Chicago's water needs. He recommended mothballing the Conventional Plant for a time because the estimated cost of demolition far exceeds the limited maintenance costs mothballing requires. However, he recommended eventual demolition of the Conventional Plant once finances allow.

Mr. Caruso testified regarding the various capital improvement projects East Chicago intended to complete. He stated that Water Department has proposed to install two new additional membrane filtration skids for the Membrane Plant, which will add needed redundancy and resiliency during normal backwash/cleaning cycles. The Water Department is also proposing to replace the existing membrane filters, which have been in service for approximately ten years. The filtration projects will cost approximately $6 million. Mr. Caruso testified that the Water Department also plans to replace the 1.5 million-gallon ("MG") tank with an approximately 2 MG new elevated storage tank (estimated to cost $5 million), which will provide a means for pressure spikes to dissipate within a properly sized tank with overflow elevation higher than current system operating pressures. The Water Department also intends to construct a new 12-inch diameter water main along North Roxana Drive (estimated to cost $1.5 million) to provide redundancy and resiliency of the current water distribution system and improve static/residual pressures in the Roxana residential area.

Regarding the LSLR project, Mr. Caruso explained that Petitioner is applying for funding through the Indiana Financing Authority ("IFA"), which oversees SRF and the State Water Infrastructure Fund ("SWIF"). East Chicago was unable to access the funding by the SRF deadline for the current fiscal year, but is working with SRF to qualify for priority funding for the following fiscal year. Mr. Caruso projected that the LSLR Project would cost approximately $10 million in 2022 dollars. He testified that there are approximately 1,175 lead service lines proposed to be replaced in their entirety and that he expects the Water Department could replace at least several hundred per year.

Andre Riley, a partner with Baker Tilly Municipal Advisors, LLC, ("BTMA"), testified that he was retained by Petitioner to complete a cost-of-service study to determine the water rates and charges necessary to support East Chicago's pro forma revenue requirements. Mr. Riley explained that the primary drivers for the proposed rate increase were: (1) the debt service and debt service reserve requirements on the proposed long-term financing; (2) the allowance for replacements and improvements and future additional projects; and (3) the need to provide for the pro forma operation and maintenance requirements.

Mr. Riley explained that East Chicago's capital projects were estimated to cost a total of $26,620,000, which is anticipated to come from a BAN issued through the open market and three series of bonds all assumed to be issued through SRF. He testified that the BAN was expected to be issued in early 2023 to cover engineering costs, rate case costs, and other soft costs to be paid before the bonds can be issued. Mr. Riley testified that the first series of bonds (2023A Bonds) are assumed to be a 20-year financing and will cover the new standpipe and water treatment plant improvements. The second series of bonds (2023B Bonds) will be amortized over 35 years and will cover the water main replacement project. Finally, the LSLR costs are separated into a final series of bonds (2023C Bonds) due to the assumed 35-year, up-to-zero-percent interest rate that SRF currently offers for this type of project. Mr. Riley testified that, while any eligible communities could receive an interest rate as low as zero percent, there is no guarantee as to what interest rate East Chicago might receive, so to be conservative, the report has not assumed a zero percent interest rate.

Mr. Riley testified that he used a test year ending March 31, 2020, combined with pro forma adjustments, receipts, and disbursements, because it fairly represented the current and future operations of the Water Department and generally avoids the COVID-19 pandemic. His opined that an overall increase of approximately 102.22% would be justified and should be phased in over a three-year period. He proposed that each class and customer would have its own unique percentage increase for Phase I, to be followed by across-the-board increases in Phases II and III. Mr. Riley also explained the adjustments he made to the pro forma annual cash operating disbursements to reflect current price levels for contractual services, salaries and wages, benefits, insurance, unemployment compensation, utilities, periodic maintenance, shared labor costs, utility receipt tax, and rate fatigue, among other things.

Ultimately, utilizing these calculations and adjustments, Mr. Riley explained that the total revenue requirements in Rate Phase I were $11,497,134; Rate Phase II total revenue requirements were $12,968,779; and Rate Phase III total revenue requirements were $14,682,157, with the net revenue requirements (after reductions from projected interest income, other revenues, and a transfer from East Chicago's Gaming Fund) equaling $9,157,153 for Phase I, $10,633,477 for Phase II, and $12,347,658 for Phase III. Mr. Riley proposed that the calculated increases for Phases II and III would be based on an across-the-board increase over the Rate Phase I rates and charges which would be increased through the cost-of-service study. In order to provide revenues to meet these requirements, Mr. Riley explained that Petitioner had proposed that water rates and charges be increased by an overall 49.97% effective September 1, 2023 (or upon Commission approval) for Rate Phase I, 16.12% effective September 1, 2024 for Rate Phase II, and 16.12% effective September 1, 2025 for Phase III.

B. Settlement Testimony. Mr. Riley testified that the parties agreed that East Chicago should recover all of its requested revenue requirements subject to true-up of the debt service and debt service reserve requirements following financing and subject to shifting $500,000 of revenue requirements from Phase I to Phase II, along with certain additional terms and conditions outlined in the Settlement Agreement, which Mr. Riley attached to his testimony as AJR S1-1. The Settlement Agreement allows East Chicago to recover the overall net revenue requirement of $12,348,530 in Phase III, effectively the same amount requested in East Chicago's petition, but clarified that this amount is subject to true-up of the debt service and debt service reserve requirements following financing. Mr. Riley explained that, for Phase I, East Chicago's rates will increase on average by 41.79% to produce $2,551,853 in additional annual operating revenue. After that, the rates will increase 28.60% across the board in Phase II to produce $2,476,326 in additional annual operating revenue and will increase 10.90% in Phase III to produce $1,214,181 in additional annual operating revenue. Mr. Riley explained that the settlement set the overall rate increase at 102.23%.[1]

Mr. Riley opined that the Settlement Agreement rates at all phases are very competitive compared to utilities throughout the state. He explained that the parties agreed that East Chicago's pre-true-up pro forma debt service reserve revenue requirement will be $195,879, which is based on the reserve being fully funded in five years. Mr. Riley testified that the parties have agreed to certain reporting on new long-term debt, including a true-up process, which may be directed by the Commission. Mr. Riley also testified regarding other provisions in the Settlement Agreement related to routine assessment and maintenance of East Chicago's waterworks infrastructure, the

---

[1] This .01% increase from the originally requested amount results from shifting $500,000 of revenue requirements to Phase II, as agreed by the parties.

Water Department's Asset Management Plan, water main repair records, consideration of alternatives to water tank replacement, compliance, and periodic maintenance. The parties agreed that East Chicago will set aside funds in a separate account for routine maintenance.

Margaret Stull, Chief Technical Advisor in the Water/Wastewater Division of the OUCC, testified on behalf of the OUCC in favor of the parties' settlement. She opined that the Settlement Agreement is balanced and in the public interest. She stated that the Settlement Agreement provides that East Chicago will be authorized to borrow the full $24.72 million it requested in its case-in-chief (not including the BAN), and East Chicago agreed not to wrap its Series B debt unless it is established that no interest, penalty, or cost would be assessed as a condition of the wrapping. Ms. Stull explained that East Chicago will issue its debt within three months of the implementation of the final order in this Cause or set aside an amount equal to the monthly revenue requirement for new debt service and debt service reserve and apply that amount to project costs to offset its borrowing by the total amount set aside. Ms. Stull also described the timeline for objecting to and replying in support of the true-up.

Ms. Stull stated that East Chicago agreed to continue annual leak detection studies and begin implementing recommendations; agreed to develop and maintain an asset management plan with annual progress reports to the Commission; agreed to keep a record of main breaks with key information; and agreed to reevaluate its decision to replace its water storage tank and consider less expensive but equally effective alternatives. She testified that the Settlement Agreement is in the public interest because the rates and charges resulting from the settlement, along with the phased-in approach to implementing the rates, lessens the impact of East Chicago's rate request while enhancing East Chicago's ability to construct much-needed improvements, maintaining its assets to ensure a useful life of those assets, and securing revenues it needs to continue to provide safe and reliable service.

Jessica York, an associate with the firm of Brubaker & Associates, Inc., testified on behalf of the Industrial Group to recommend approval of the Settlement Agreement. She explained that the agreed-upon revenue allocation reflects a compromise between the parties to resolve the issues that would have been contested in this case and to reduce rate case expenses for all parties. Ms. York opined that the Settlement Agreement is a comprehensive agreement that resolves both revenue requirements and the allocation and rate design issues raised in this rate case. She explained that, while the parties did not agree to a particular cost-of-service approach, the parties agreed to a modified revenue allocation to adjust rates and charges. She testified that the Settlement Agreement was the result of extensive arms-length negotiations and was within the range of outcomes from a litigated case.

6. Commission Discussion and Findings. Settlements presented to the Commission are not ordinary contracts between private parties. *U.S. Gypsum, Inc. v. Ind. 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 Coal. of Ind., Inc. v. PSI Energy, Inc.*, 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 Coal.*, 664 N.E.2d at 406.

In addition, 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 Coal. of Ind. v. Pub. Serv. Co. of Ind., Inc.*, 582 N.E.2d 330, 331 (Ind. 1991)). The Commission's procedural rules require that settlements be supported by probative evidence. 170 IAC 1-1.1-17(d). Before the Commission can approve the Settlement Agreement, the Commission must determine whether the evidence in this Cause sufficiently supports the conclusion that the Settlement Agreement is reasonable, just, and consistent with the purpose of Ind. Code ch. 8-1-2 and that such agreement serves the public interest.

A. Settlement Agreement. The unanimous Settlement Agreement contains the stipulated terms and conditions of the settlement between the OUCC, East Chicago, and the Industrial Group in this Cause. The Settlement Agreement provides that Petitioner be authorized to increase its rates by 102.23% over three phases. Some of the major terms of the Settlement Agreement are analyzed below.

i. Revenue Requirement. The parties have agreed that East Chicago's test year operating revenue at present rates shall be $6,106,170 and the overall agreed net revenue requirement is $12,348,530, as depicted on page 1 in East Chicago's Attachment AJR S1-2:

EAST CHICAGO (INDIANA) DEPARTMENT OF WATERWORKS

<u>PRO FORMA ANNUAL REVENUE REQUIREMENTS AND ANNUAL REVENUES</u>

	Settlement Phases			
	Phase I	Phase II	Phase III	Overall
<u>Revenue Requirements:</u>	(2023)	(2024)	(2025)	
Operation and maintenance	$5,040,235	$5,977,164	$5,977,164	$5,977,164
Payment in lieu of taxes	450,000	1,105,000	1,788,900	1,788,900
Debt service				
Outstanding Bonds	3,500,314	3,498,677	3,501,555	3,501,555
Proposed Bonds	1,063,636	1,058,501	1,052,142	1,052,142
Debt Service Reserve	195,879	195,879	195,879	195,879
Working capital	147,940	147,940	147,940	147,940
Replacements and improvements	600,000	1,486,490	2,019,449	2,019,449
Sub-total	10,998,004	13,469,651	14,683,029	14,683,029
Less interest income	(203,050)	(203,050)	(203,050)	(203,050)
Less other revenues	(224,125)	(224,125)	(224,125)	(224,125)
Less transfers from Gaming Fund	(1,877,182)	(1,872,503)	(1,871,700)	(1,871,700)
Less penalties	(35,624)	(35,624)	(35,624)	(35,624)
Total Net Revenue Requirements	$8,658,023	$11,134,349	$12,348,530	$12,348,530
<u>Annual Revenues:</u>				
Residential	$1,229,913	$1,894,728	$2,436,620	$1,229,913
Commercial	706,159	1,090,106	1,401,876	706,159
Industrial	3,238,101	4,336,825	5,577,289	3,238,101
Housing and Public Authority	264,353	359,028	461,710	264,353
Fire Protection	635,675	886,552	1,140,106	635,675
Hydrant Rental	31,969	90,784	116,748	31,969
Total Annual Revenues	$6,106,170	$8,658,023	$11,134,349	$6,106,170
Total Additional Revenues Required	$2,551,853	$2,476,326	$1,214,181	$6,242,360
Total Revenue Requirement Increase	41.79%	28.60%	10.90%	102.23%

The Commission finds, and the parties agree, that East Chicago's operating revenue at present rates is inadequate. To accomplish the overall agreed revenue requirement, the parties negotiated and stipulated to shifting $500,000 in required revenue from Phase I to Phase II. The parties' evidence reflects that this amount was the product of arm's-length compromise and within the range the evidence supported and the possible results for a litigated case. We therefore find that the revenue requirement, as agreed to by the parties, is supported by substantial evidence of record.

ii. **<u>Long-Term Debt</u>.** Based on the Settlement Agreement, Petitioner is proposing to incur long-term indebtedness through a loan made by the SRF in the principal amount not to exceed $24.72 million (the "Bonds"). Before Petitioner may issue the Bonds, we must grant approval pursuant to Ind. Code § 8-1.5-2-19. Based on AJR S1-2 above and in accordance with Ind. Code § 8-1.5-2-19(b), we certify that Petitioner's authorized rates and charges will provide sufficient funds for the operation, maintenance, and depreciation of the utility, and to pay the principal and interest of the proposed bond issue, together with a surplus or margin of at least ten percent in excess. Furthermore, we will approve the issuance of bonds, notes, or other obligations by a municipally owned utility if we find that the projects to be funded with the proceeds are reasonably necessary for the provision of adequate and efficient utility services and if we find the proposed debt issuance is a reasonable method for financing such projects.

East Chicago anticipates completing several capital improvement projects, including adding and replacing membrane filtration skids, replacing the 1.5 MG tank with a 2 MG elevated storage tank, constructing a new 12-inch diameter water main, and replacing lead service lines. Petitioner's witnesses explained why these projects are necessary for the efficient and reliable operation of the Water Department, and the Commission understands that, as a result of the Settlement Agreement, Petitioner has also agreed to re-evaluate the replacement of the storage tank to determine whether any other lower-cost alternative is deemed appropriate. The total estimated projects costs are $26.62 million. East Chicago proposed to cover $1.9 million of this expense through a BAN taken out in the spring of 2023, which was to be used for preliminary engineering costs and current expenses. The parties agreed in settlement that it was appropriate for East Chicago to borrow the full remaining amount of $24.72 million.

The evidence of record supports accounting for SRF debt in this amount. Petitioner's witnesses Ms. Guzman and Mr. Caruso testified regarding the need for the capital projects and Petitioner's accounting expert, Mr. Riley, testified that the proposed SRF loan is a reasonable method to finance the improvements. Based on the evidence of record, we find the proposed projects are reasonably necessary for the provision of adequate and efficient utility service and that the proposed debt issuance is a reasonable method for financing such projects. We therefore find that the agreement as to the amount of long-term debt accounted for in the debt service and debt service reserve for purposes of generating the revenue requirement is likewise reasonable and in the public interest and the issuance of the bonds should be approved.

iii. **Rate Design.** BTMA conducted a cost-of-service study and proposed a certain rate design. In the settlement process, the parties did not agree upon a particular cost-of-service study, but agreed to an overall rate increase while adjusting the revenue requirement between the first and second phase and adjusted the rates in each phase in order to achieve the modified agreed revenue allocation. The shifted revenue requirement was negotiated to achieve a result that was acceptable to the parties. The Commission finds the parties' agreement to be reasonable, within the bounds of the evidence, and in the public interest.

iv. **Phased-in Rates.** In the settlement process, the parties negotiated an overall rate increase and certain average increases for Phases I through III. The parties stipulated and agreed to the following phased-in rate increase: Phase I, to be effective upon issuance of the Commission's order in this Cause, an increase of 41.79% to produce $2,551,853 in additional annual operating revenue; Phase II, to be effective as of September 1, 2024, an increase of 28.60% to produce $2,476,326 in additional annual operating revenue; and Phase III, to be effective as of September 1, 2025, an increase of 10.9% to produce $1,214,181 in additional annual operating revenue. The overall increased revenue amount is $6,242,360, a 102.23% increase over current revenues. The Commission finds that the phased-in approach is designed to mitigate rate impact and is reasonable and in the public interest.

v. **Reporting.** Consistent with the Settlement Agreement, within 30 days of closing on long-term debt issuance, East Chicago will file a report in this Cause explaining the terms of the new loan, the balance actually borrowed, the amount of debt service reserve, and an itemized account of all issuance costs, including issuance costs actually incurred to that date. The report should include a revised tariff (if necessary), an amortization schedule, and a calculation of the rate impact presented in a manner similar to that included in Petitioner's schedules. The parties have agreed that the tariff shall be increased or decreased as appropriate based on the actual costs of financing, and, with respect to the true-up, rates need not be revised if all parties agree in a writing filed with the Commission in this Cause that the change in rates indicated by the true-up report need not be implemented for lack of materiality. The parties have agreed that any decrease to the revenue requirement as a result of the true-up process will be reflected as a decrease solely to the volumetric rates. The Commission reserves jurisdiction to order a revised tariff notwithstanding any agreement of the parties if it deems the revisions material.

vi. **Conclusion.** The Commission has before it substantial evidence of record from which to determine the reasonableness of the terms of the Settlement Agreement. Our review of the reasonableness of the Settlement Agreement is aided by the parties' supporting settlement testimony. We find that the Settlement Agreement is the product of arm's-length negotiations between the OUCC, Petitioner, and the Industrial Group and that the terms of the Settlement Agreement are supported by the evidence and represent a reasonable and lawful resolution of the issues presented to the Commission. Approval of the Settlement Agreement eliminates the risks, uncertainty, and consumption of time and resources that would otherwise be required for the Commission to issue its final order in this proceeding. The parties' supporting testimony provides an explanation of the components underlying the increase in base rates and charges provided for in the Settlement Agreement. The Settlement Agreement is in the public interest in that it maintains East Chicago's ability to comply with relevant environmental protocols. We therefore find that the Settlement Agreement is reasonable and in the public interest and approve the Settlement Agreement. East Chicago should file a revised tariff with the Commission's Water/Sewer Division setting forth the rate increase authorized by this order.

B. **Effect of Settlement Agreement.** The Settlement Agreement shall 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. With regard to future citation of the Settlement Agreement, we find that the Settlement Agreement and our approval of it should be treated in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434 (March 19, 1997).

C. **Effect on Residential Customers.** A typical residential water customer of East Chicago using 5,000 gallons per month currently pays $18.43. Following the Phase I increase, such a customer will pay $30.20 (an increase of $11.77 per month over current rates). After the Phase II increase, such a customer will pay $36.41 per month (an increase of $6.21 over Phase I rates). Finally, after the Phase III increase, a residential customer using 5,000 gallons per month will pay $40.39 (an increase of $3.98 over Phase II rates). The overall rate increase from current rates to Phase III is $21.96.

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

1. The Settlement Agreement, a copy of which is attached to this order, is approved in its entirety and incorporated as a part of this order as if set out in full.

2. Petitioner is authorized to increase its rates and charges to reflect annual revenues of $12,348,530 over three phases, representing a cumulative 102.23% increase, consistent with the terms of the Settlement Agreement.

3. Petitioner is granted a Certificate of Authority to issue additional long-term debt not to exceed $24.72 million with terms of 20-year or 35-year series bond maturities at the best available rate, as approved in this order. This order shall be the sole evidence of Petitioner's certificate.

4. Petitioner shall file a bond report as noted in this order.

5. In accordance with Ind. Code § 8-1-2-85, Petitioner shall pay a fee equal to $0.25 for each $100 of water utility revenue bonds issued, to the Secretary of the Commission, within 30 days of the receipt of the financing proceeds authorized in this order.

6. In accordance with Ind. Code § 8-1-2-70, Petitioner shall pay the following itemized charges within 20 days from the date of this order into the Commission public utility fund account described in Ind. Code § 8-1-6-2, through the Secretary of the Commission, as well as any additional costs that were incurred in connection with this Cause:

Commission Charges	$ 5,158.27
OUCC Charges	$22,843.10
Legal Advertising Charges	$ 134.97
TOTAL	$28,136.34

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

HUSTON, BENNETT, FREEMAN, VELETA, AND ZIEGNER CONCUR:

APPROVED: AUG 16 2023

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

Dana Kosco Digitally signed by Dana Kosco Date: 2023.08.16 10:15:15 -04'00'

Dana Kosco
Secretary of the Commission

STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION

PETITION OF THE CITY OF EAST CHICAGO, INDIANA FOR AUTHORITY TO ISSUE BONDS, NOTES, OR OTHER OBLIGATIONS, FOR AUTHORITY TO INCREASE ITS RATES AND CHARGES FOR WATER SERVICE, AND FOR APPROVAL OF NEW SCHEDULES OF WATER RATES AND CHARGES.	)	CAUSE NO. 45827

JOINT STIPULATION AND SETTLEMENT AGREEMENT

On December 12, 2022, the City of East Chicago, Indiana, ("Petitioner," "East Chicago," or the "City") filed with the Commission its Petition initiating this Cause and its case-in-chief. The Indiana Office of the Utility Consumer Counselor (the "OUCC"), the Intervenor Industrial Group ("Intervenors"), and Petitioner, being all of the parties to this cause (East Chicago, Intervenors, and the OUCC, collectively, the "Parties," and individually, a "Party"), have, after arms-length settlement negotiations, reached an agreement with respect to all of the issues before the Indiana Utility Regulatory Commission (the "Commission") in this Cause. The Parties therefore stipulate and agree for purposes of resolving all the issues in this Cause to the terms and conditions set forth in this Joint Stipulation and Settlement Agreement (this "Settlement").

1. **Borrowing**

A. Long-Term Debt. The Parties stipulate and agree that East Chicago should be authorized to borrow the full amount it requested in its case-in-chief, specifically $24.72 million (not including the BAN), subject to any decrease reflected by the actual cost of the financing issued and the additional terms and conditions below.

B. <u>Debt Service Revenue Requirement and Timing of Phases.</u> The debt service revenue requirement for the new debt based on the projected phases shall be $1,063,636 in Phase 1, $1,058,501 in Phase 2 and $1,052,142 in Phase 3. Phase 1 shall commence at the time of order, Phase 2 shall commence on January 1, 2025, and Phase 3 shall commence on January 1, 2026.

C. <u>Series B Debt</u>. East Chicago agrees it will not wrap its Series B debt unless it is established that no interest, penalty, or cost would be assessed as a condition of the wrapping.

D. <u>Timing of Borrowing</u>. East Chicago shall issue its debt within three months of the implementation of the final order in this Cause. If not issued within three months, East Chicago shall set aside an amount equal to the monthly revenue requirement for debt service and debt service reserve on new debt embedded in rates. East Chicago shall apply that amount to project costs so that East Chicago offsets its borrowing by the total amount so set aside.

E. <u>True-Up Reporting</u>. East Chicago agrees to true-up its rates based on applicable terms affecting debt service and debt service reserve requirements including interest rates, total borrowing BAN repayment, and fees. East Chicago shall quantify in its true-up its soft costs including all legal, engineering, and other fees included in the financing. East Chicago shall provide any bid tabulations on applicable projects. East Chicago shall notify the OUCC of any grants, forgivable loans, or other subsidizations achieved and state any prospective effect on rates. For purposes of this requirement, East Chicago's pre-true-up pro forma debt service reserve revenue requirement shall be $195,879, which is based on the reserve being fully funded in five years.

i. Within thirty (30) days of closing on long-term debt issuance, East Chicago will file a report explaining the terms of the new loan, the balance actually borrowed, the amount of debt service reserve and an itemized account of all issuance costs, including issuance costs actually incurred to that date. The report should include a revised tariff (if necessary, as discussed below), amortization schedule and a calculation of the rate impact presented in a manner similar to that included in Petitioner's schedules.

ii. The tariff shall be increased or decreased as appropriate based on the actual costs of financing. However, the Parties agree that with respect to the true-up, rates need not be revised if all settling parties have stated in a writing filed with the Commission in this Cause that the change in rates indicated by the true-up report need not be implemented for lack of materiality or other reasons. The Parties acknowledge the Commission may override such a decision and require East Chicago to file revised rates based on the true-up.

iii. The OUCC shall submit any objection to Petitioner's true-up filing to the Commission within twenty-one (21) days of said filing, Petitioner shall respond to any objection to the true-up filing within twenty-one (21) days of said filing, and the OUCC shall reply in support of any objection within seven days of Petitioner's response thereto.

F. Lead Service Line Funding. If any lead service line grants are received after the true-up, a report shall be filed with the Commission stating the amount of the grant or other subsidization. Any corresponding reduction in debt service will be allocated to critical capital needs, such as needed main replacement projects. If no critical capital need is identified, the amount will be amortized over the remaining life of the rates and deducted from the debt service revenue requirements resulting in a rate decrease unless deemed immaterial.

2. Stipulated Rates and Revenues

A. Test Year Operating Revenues. The Parties stipulate and agree that East Chicago's test year operating revenue at present rates shall be $6,106,170 as depicted on page 1 in East Chicago's Attachment AJR S1-2.

B. Revenue Requirement. The Parties stipulate and agree that East Chicago's current rates and charges are inadequate. The parties further agree to modifying Petitioner's original proposal on the phased revenue requirements to shift $500,000 of revenue requirements from Phase 1 to Phase 2, such that the following revenue requirements will apply: Phase 1 shall include $8,658,023; Phase 2 shall include $11,134,349; and Phase 3 shall include $12,348,530. Accordingly, East Chicago's rates and charges should be increased as follows:

i. Phase 1: Immediately upon the issuance of the Commission Order, East Chicago's rates should be increased by 41.79% so as to produce $2,551,853 in additional annual operating revenue.

ii. Phase 2: Effective on January 1, 2025, East Chicago's rates should be increased by 28.60% over Phase 1 rates to produce $2,476,326 in additional annual operating revenue.

iii. Phase 3: Effective on January 1, 2026, East Chicago's rates should be increased by 10.90% over Phase 2 rates to produce $1,214,181 in additional annual operating revenue.

The overall increased revenue amount is $6,242,360, a 102.23% increase over current revenues. The overall agreed net revenue requirement is $12,348,530.

C. Pro Forma Authorized Rates. The Parties stipulate and agree that after anticipated adjustments East Chicago's pro forma operating revenues will be $8,658,023 in Phase 1, $11,134,349 in Phase 2, and $12,348,530 in Phase 3, as reflected on page 1 to East Chicago's Attachment AJR S1-2. The Parties further stipulate and agree that East Chicago's revenue requirements for the rate increase is depicted on page 1 in East Chicago's Attachment AJR S1-2. The Parties stipulate and agree that the rate increases provided herein and the rates set forth in East Chicago Attachment AJR S1-2 are just and reasonable and should be approved. The Parties stipulate and agree that any decrease to the revenue requirement as a result of the true up process will be reflected as a decrease solely to the volumetric rates.

D. Adjustments. The Parties agree and stipulate to the adjustments reflected in Petitioner's case-in-chief.

E. Financial Schedules. The Parties stipulate for settlement purposes to the financial schedules included with East Chicago's Attachment AJR S1-2.

3. **Additional Terms.**

A. Routine Assessment. East Chicago will continue annual leak detection studies and prudently begin implementing recommendations (e.g., from ME Simpson/AWWA annual studies and reports), which may include active leak detection, pressure management, large meter testing, internal pipe condition assessment and associated main replacements. East Chicago maintains discretion to deem recommendations infeasible and/or to determine the timing of implementation.

B. Asset Management Plan. East Chicago will develop and maintain an Asset Management Plan pursuant to the Asset Management Program Guidance for the Indiana State Revolving Fund Loan Program (2019) and more specifically Part VI – "Plan for Maintaining, Repairing, and Replacing the Utility System's Assets and Plan for Funding." East Chicago will provide the OUCC a copy of the plan along with any subsequent major updates. East Chicago will further note in its IURC annual reports its progress in developing its Asset Management Plan and describe any Asset Management Plan Updates and Asset Management Plan Implementation including capital improvements made in the reported year.

C. Main Break Records. East Chicago will keep a record of its main breaks including date, location, size, and main material (e.g., 12-inch cast iron) estimated water loss, type of repair, cost of repair, and description of root cause and report such information in its IURC annual reports.

D. Water Storage Tank Re-evaluation. East Chicago will re-evaluate its decision to replace its water storage tank to address surge problems and will consider less expensive, but potentially equally effective, means such as slow pump speed changes, slow opening/closing control valves, surge tank, and/or surge/pressure relief valves. East Chicago, however, maintains discretion as to whether or not to replace the water storage tank as planned and/or to implement a referenced alternative.

E. Periodic Maintenance. East Chicago shall segregate an amount equal to its approved annual pro forma periodic maintenance expense in a separate and discrete account, use of which shall be restricted to paying for periodic maintenance of its system.

F. Compliance. East Chicago acknowledges and agrees to abide by Ind. Code § 8-1.5-3-8.

4. **Submission of Evidence.** The Parties stipulate to the admission into evidence in this Cause of the testimony previously filed (East Chicago's Case-in-Chief and any testimony in support of this Settlement on behalf of the OUCC, on behalf of East Chicago, and on behalf of the Intervenors). Further, each Party waives cross-examination of the other's witnesses with respect to such testimony. The Parties shall not offer any further testimony or evidence in this proceeding, other than this Settlement and the above-identified testimony and exhibits. If the Commission should request additional evidence to support the Settlement, the Parties shall cooperate to provide such requested additional evidence.

5. **Proposed Final Order.** The Parties agree to cooperate on the preparation and submission to the Commission of a proposed order that reflects the terms of this Settlement and the settlement testimony submitted pursuant to Section 4 hereof.

6. **Sufficiency of Evidence.** The Parties stipulate and agree that the evidentiary material identified immediately above constitutes a sufficient evidentiary basis for the issuance of a final order by the Commission adopting the terms of this Settlement, and granting the relief requested.

7. **Commission Alteration of Agreement.** The concurrence of the Parties with the terms of this Settlement is expressly predicated upon the Commission's approval of this Settlement. If the Commission alters this Settlement in any material way, unless that alteration is unanimously and explicitly consented to by the Parties, this Settlement shall be deemed withdrawn.

8. **Authorization.** The undersigned represent that they are fully authorized to execute this Settlement on behalf of their respective clients or parties, who will be bound thereby.

9. **Non-Precedential Nature of Settlement.** The Parties stipulate and agree that this Settlement shall not be cited as precedent against any Party in any subsequent proceeding or deemed an admission by any party in any other proceeding, except as necessary to enforce the terms of this Settlement or the final order to be issued in this Cause before the Commission or any court of competent jurisdiction on these particular issues and in this particular matter. This Settlement is solely the result of compromise in the settlement process and, as provided herein, is without prejudice to and shall not constitute a waiver of any position that any of the Parties may take with respect to any or all of the items resolved herein in any future regulatory or other proceeding, and, failing approval by the Commission, shall not be admissible in any subsequent proceeding.

10. **<u>Counterparts</u>.** This Settlement may be executed in one or more counterparts (or upon separate signature pages bound together into one or more counterparts), all of which taken together shall constitute one agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Settlement on the dates set forth below.

CITY OF EAST CHICAGO, INDIANA
DEPARTMENT OF WATERWORKS

By: Jane Dall Wilson
Counsel

Dated: 4/28/2023

OFFICE OF UTILITY CONSUMER COUNSEL

By: ______________________
Deputy Consumer Counselor

Dated: 4/28/2023

EAST CHICAGO WATER DEPARTMENT
INDUSTRIAL GROUP

By: ______________________
Counsel

Dated: ______________________

IN WITNESS WHEREOF, the parties have executed this Settlement on the dates set forth below.

CITY OF EAST CHICAGO, INDIANA
DEPARTMENT OF WATERWORKS

By:______________________________ Dated:________________________
Counsel

OFFICE OF UTILITY CONSUMER COUNSEL

By:______________________________ Dated:________________________
Deputy Consumer Counselor

EAST CHICAGO WATER DEPARTMENT
INDUSTRIAL GROUP

By: Aaron Schmoll Dated: 4/28/23
Counsel