

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

[Handwritten signatures and initials]

PETITION OF THE CITY OF MARION,)
INDIANA, FOR AUTHORITY TO INCREASE)
ITS RATES AND CHARGES FOR WATER)
SERVICE, AND FOR APPROVAL OF NEW)
NEW SCHEDULE OF RATES AND)
CHARGES APPLICABLE THERETO)

CAUSE NO. 42720

APPROVED: MAR 3 0 2005

BY THE COMMISSION:

David E. Ziegner, Commissioner

Andrea L. Brandes, Administrative Law Judge

On September 9, 2004, the City of Marion ("Petitioner") filed with the Indiana Utility Regulatory Commission ("Commission" or "IURC") its Petition for authority to increase its rates and charges for water service and for approval of a new schedule of rates and charges applicable thereto.

Pursuant to proper notice of hearing, published as required by law, proof of which was incorporated into the record by reference, a Prehearing Conference was convened on October 13, 2004, at 9:30 a.m. EST in Room E306, Indiana Government Center South, Indianapolis, Indiana. Counsel for the Petitioner and Office of Utility Consumer Counselor ("OUCC" or "Public") appeared and selected a procedural schedule for this Cause. That procedural schedule was memorialized in the Commission's Prehearing Conference Order of October 20, 2004.

On February 3, 2005, the parties submitted a "Stipulation and Settlement Agreement" ("Settlement Agreement" or "Settlement"). Attached to the filed Settlement Agreement was a proposed order reflecting their stipulated and agreed resolution of the issues in this Cause. This Order reflects the understanding of the parties as set forth in their agreed proposed order. However, to the extent that the parties' agreed resolution has been modified by the Commission, the Agreement is hereby approved consistent with the findings set forth herein.

Pursuant to proper notice of hearing, published as required by law, proof of which was incorporated into the record by reference, an Evidentiary Hearing was convened on February 24, 2004, at 9:30 a.m. EST in Room E306 of the Indiana Government Center South, Indianapolis, Indiana. Petitioner and the OUCC offered a Joint Exhibit setting forth the rate increase to which the parties have agreed, as well as additional evidence.

Based upon the applicable law and the evidence herein, the Commission now finds that:

1. **Notice and Jurisdiction.** Petitioner is a "municipally-owned utility" as that phrase is used in Ind. Code § 8-1-2-1(h), and is subject to the jurisdiction of this Commission to the extent provided by law. Notice of the prehearing conference and the evidentiary hearing was

provided as required by law. The Commission has jurisdiction over the parties and the subject matter of this Cause.

2. **Petitioner's Characteristics.** Petitioner is a municipality which owns and operates plant and equipment within the State of Indiana for the production, transmission, delivery, and furnishing of water to the public within and around the City of Marion, Indiana. Petitioner's existing schedule of water rates and charges was approved by the Commission on August 5, 1992, in Cause No. 39422.

3. **Test Year.** The test year used by Petitioner for determining Petitioner's annual revenue requirement in this Cause was the twelve (12) months ended April 30, 2004, with adjustments for changes which are fixed, known, and measurable and which will occur within twelve (12) months of the close of the test year. We find this test year to be sufficiently representative of Petitioner's ongoing operations to be used for ratemaking purposes.

4. **Petitioner's Requested Rate Increase.** Petitioner has requested a rate increase not to exceed 61.27%. In addition to this increase, Petitioner has adopted an ordinance pursuant to Ind. Code § 8-1-2-103(d) to change the method of recovery of public fire protection from a hydrant charge directly billed to the City of Marion to a surcharge by meter size to be paid by Petitioner's customers. The combination of the requested rate increase and the change in public fire protection cost recovery would result in an increase in the amount paid by the average residential customer of approximately 81.25% (Joint Exhibit 1, Settlement Schedule 1, Page 1 of 2). We note that Petitioner presented revenue requirements which would support a more significant increase. Petitioner's witness John R. Skomp testified during the evidentiary hearing that Petitioner neither wanted nor sought a phased-in rate increase. Nonetheless, in his prefiled testimony Marion Mayor Wayne Seybold stated that Petitioner is unwilling at this time to increase the rates higher than this level due to the significance of the increase.

The revenue requirements before additional Utility Receipts Tax to which the parties have agreed and which we find are as follows:

Operation and Maintenance Expense	\$2,228,585
Taxes other than Income Taxes	\$ 111,577
Debt Service	\$ 857,875
Extensions and Replacements	<u>\$1,721,380</u>
Revenue Requirement	\$4,919,417
Offset: Interest Income	(<u>81,602</u>)
TOTAL	\$4,837,815

The level of extensions and replacements in the Joint Stipulation is higher than the amount included in Petitioner's Case-in-Chief. However, Petitioner did not initially propose rates that would fully fund all of the extensions and replacements requested by Petitioner's capital improvement plan. The OUCC identified adjustments to revenues and expenses that should allow a greater percentage of pro forma revenues to be available for extensions and replacements such that Petitioner's budget for extensions and replacements can be increased with

the level of rate increase to which the parties have agreed. There is no dispute that Petitioner's need for extensions and replacements is at least at the level to which the parties have stipulated.

The parties stipulate and we find that Petitioner's pro forma revenues at presently-tariffed rates is \$3,046,597. The Commission finds that the rates and charges currently in effect for services rendered by Petitioner are inadequate to provide for Petitioner's annual revenue requirement and should be increased across-the-board by 61.27% to produce \$1,816,651 in additional revenues and total operating revenues of \$4,863,248, including additional Utility Receipts Tax of \$25,433.

5. **Public Fire Protection.** On December 21, 2004, the Common Council of the City of Marion adopted an ordinance pursuant to Ind. Code § 8-1-2-103(d) to change the method of recovery of public fire protection costs from a system of charges billed directly to the City by the utility to a system of surcharges billed to each customer and assessed according to meter size. Petitioner has calculated the customer surcharge to be \$3.06 per 5/8-inch meter equivalent. However, Mr. Skomp testified that Petitioner did not perform a cost of service study in determining the amount of this surcharge. Mr. Skomp also indicated that in his experience, a surcharge in this dollar amount, as compared to other similar municipalities, was "on the high side". Mr. Skomp further explained that the current annual public hydrant rental fee of \$259.92 had been increased to \$419.01 to reflect Petitioner's across-the-board increase in rates and charges of 61.27% in this Cause. Petitioner has given no other explanation or justification for this increase. Thus, given the uncertainty on our part as to the derivation and accuracy of such a charge, we decline to grant Petitioner any authorization in this Cause to implement its new billing method in the amount requested. Without establishing precedent for use in any other proceeding, given the circumstances of this particular Cause we believe this issue would more appropriately be addressed in the Commission's standard Thirty (30) Day Filing procedure. Such a filing by Petitioner will afford the Commission's Gas/Water/Sewer Division an opportunity to more carefully scrutinize Petitioner's cost support and to seek additional information as needed.

6. **Stipulation and Settlement Agreement.** 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. App. 1996)). Thus, the Commission "may not accept a settlement merely because the private parties are satisfied; rather [the Commission] must consider whether the public interest will be served by accepting the settlement." Citizens Action Coalition, 664 N.E.2d at 406.

Furthermore, any Commission decision, ruling, or order – including the approval of a settlement – must be supported by specific findings of fact and sufficient evidence. United States Gypsum, 735 N.E.2d at 795 (citing Citizens Action Coalition v. Public Service Co., 582 N.E.2d 330, 331 (Ind. 1991)). The Commission's own procedural rules require that settlements be supported by probative evidence. 170 IAC 1-1.1-17(d). Therefore, before the Commission can approve the Settlement Agreement, we must determine whether the evidence in this Cause sufficiently supports the conclusions that the Settlement Agreement is reasonable, just, and consistent with the purpose of Ind. Code § 8-1-2 et seq., and that such agreement serves the

public interest.

Based on the foregoing evidence, we find that the Petitioner's rates should be approved as agreed upon in the Settlement Agreement with the exception of the public fire protection fee, which will be further analyzed in the Commission's standard Thirty (30) Day Filing procedure. Petitioner is thus directed to make the appropriate filing with the Commission's Gas/Water/Sewer Division. We believe the Settlement Agreement, as limited herein, serves the public interest.

7. **Non-Precedential Status.** The parties agree that the Settlement Agreement should 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. Consequently, with regard to future citation of the Settlement Agreement, we find that our approval herein should be construed in a manner consistent with our finding in Richmond Power & Light, Cause No. 40434, (*Ind. Util. Reg. Comm'n*, March 19, 1997).

8. **Conclusion.** The Commission finds that Petitioner's existing rates and charges are not sufficient to meet the necessary expenses incident to the operation of Petitioner's utility and that the proposed across-the-board increase of 61.27% in rates and charges should be approved. We find that the parties' Stipulation and Settlement Agreement should be approved with the exception of the parties' proposal for increasing the public fire protection fee as previously discussed.

9. In accordance with I.C. 8-1-2-70, the Petitioner shall pay within twenty (20) days from the date of this Order into the Treasury of the State of Indiana, through the Secretary of this Commission, the following itemized charges, as well as any additional charges which were or may be incurred in connection with this Cause:

Commission Charges	\$200.00
Legal Advertising Charges	62.04
Reporting Charges	36.54
OUCG Charges	<u>200.00</u>
TOTAL	\$498.58

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

1. Petitioner shall be and hereby is authorized to increase its rates and charges for water utility service across-the-board by 61.27% to produce \$1,816,651 in additional revenues and total operating revenues of \$4,863,248 with the exception of the public fire protection fee.

2. Petitioner shall file with the Gas/Water/Sewer Division of the Commission new schedules of rates and charges before placing in effect the rate increase authorized herein, which

schedules, when approved by the Gas/Water/Sewer Division, shall be effective and shall cancel all previously approved schedules of rates and charges.

3. Petitioner's request for authorization to assess customers a fire protection surcharge of \$3.06 per 5/8-inch meter equivalent in lieu of directly billed hydrant charges is denied on the basis of insufficient evidence and information. If Petitioner wishes to proceed on this issue, Petitioner may pursue authorization via the Commission's standard Thirty (30) Day Filing procedure.

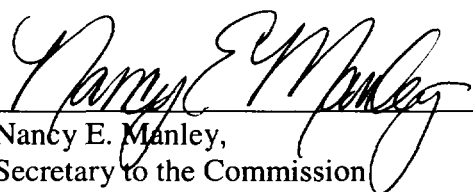
4. The Stipulation and Settlement Agreement signed by the parties shall be and hereby is approved as modified herein.

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

McCARTY, HADLEY, LANDIS and RIPLEY CONCUR; ZIEGNER ABSENT:
APPROVED:

MAR 30 2005

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



Nancy E. Manley,
Secretary to the Commission