

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF DOE ) CAUSE NO. 43530 U  
CREEK SEWER UTILITY, INC. FOR A NEW )  
SCHEDULE OF RATES AND CHARGES ) APPROVED: JUN 10 2009

**BY THE COMMISSION:**

Jeffrey L. Golc, Commissioner

Lorraine Hitz-Bradley, Administrative Law Judge

On July 7, 2008, Doe Creek Sewer Utility ("Doe Creek" or "Petitioner") filed with the Indiana Utility Regulatory Commission ("Commission") a small utility rate increase application requesting authority to increase its rates and charges for sewer service by 34.96%. Pursuant to notice given, a public field hearing was held at the Doe Creek Elementary School, commencing at 5:30 PM, local time, on Monday, February 9, 2009. Representatives for the Commission, OUCC and members of the public attended, with several customers providing written and oral testimony.

On March 2, 2009 the OUCC filed its report, compiled by analysts Roger Pettijohn, Richard Corey and Edward Kaufman. On April 15, 2009 the OUCC filed a *Notice of Settlement* which referenced Mr. Corey's accounting schedules from the OUCC's March 2<sup>nd</sup> exhibit setting forth the financial and accounting aspects of the OUCC's recommended 21.52% across-the-board rate increase proposed in the settlement agreement, along with a Revised Schedule 9 to the OUCC's pre-filed exhibit that supports the revised, proposed System Development Charge (\$1,422 per EDU).

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

1. **Statutory Notice and Commission Jurisdiction.** Due, legal, and timely notice of these proceedings was given as required by law. Doe Creek is a "public utility" as defined in Ind. Code § 8-1-2-1, *et seq.* In this proceeding, Doe Creek Utilities, Inc. sought approval to increase its current rates and charges. Based on Doe Creek's status as a privately owned utility and the relief sought, this Commission has jurisdiction in this matter.

2. **Petitioner's Characteristics.** Doe Creek Sewer Utility, Inc. is a for-profit investor-owned corporation that provides wastewater utility services to approximately 380 residential customers in a rural area of western Hancock County, Indiana. Petitioner renders its service by means of utility plant, property, equipment and facilities owned, operated, managed and controlled by it, and used for the provision of utility service.

3. **Existing Rates, Test Year, and Relief Requested.** Currently, Doe Creek charges a basic Single Family Resident rate of \$39.50 per month, which was approved by the Commission in its Order in Cause 40108, dated May 24, 1995. Rates for other classes of

customers are based on equivalency factor units (EDUs), which assign the basic single family resident rate a factor of 1.0, and other types of customers equivalency factors ranging from .4 to 2.0 based on the type of customer. Doe Creek's application indicates that it seeks to increase its rates and charges across the board by 34.96%, which includes as a revenue requirement representing a return on original cost rate base of \$571,605 and a weighted cost of capital of 5.46%. The increase as requested would result in a single family residence rate of \$53.31 per month. Doe Creek's proposed rate would provide additional revenues to pay for increased operating expenses in part stemming from plant additions discussed in the facility operations section of the OUCC's report. The proposed settlement agreement results in a basic monthly residential rate of \$48.00 per month.

4. **Evidence of the Parties.**

A. **Petitioner's Case-In-Chief.** Doe Creek's case-in-chief consisted of the "Small Private Rural Sewer Utility" rate case application prepared in conjunction with O. W. Krohn and Associates. As discussed above, Petitioner originally proposed a 34.96% across-the-board increase which would have increased its proforma revenues by \$64,589.

B. **The OUCC Report.** OUCC filed its Report on March 2, 2009. The OUCC proposed:

- 1) reducing Doe Creek's proposed system development charge from \$2,500 to \$786;
- 2) correcting Doe Creek's proposed CIAC amortization treatment to be consistent with the Commission's February 11, 2009 order in Cause 43435 *In the Matter of the Verified Petition of Hamilton Southeastern Utilities, Inc.*;
- 3) requiring Doe Creek to work with New Palestine Family Dentistry to determine whether or not the Doe Creek's proposed 1.4 EDU per chair factor is reasonable and if not, to amend that EDU factor and submit it for Commission approval; and
- 4) accepting all of OUCC's accounting adjustments and authorizing Doe Creek to increase its rates by 21.52% for a total monthly rate of \$48.00 for a single family residence.

The revenue increase of \$39,751 is reasonably estimated to allow Petitioner the opportunity to earn net operating income of \$30,757 as follows:

Operating Revenue	224,502
O & M Expense	151,793
Depreciation Expense	41,654
Amortization Expense	(20,594)
Taxes Other Than Income	20,893
Total Operating Expenses	193,745
<b>Net Operating Income</b>	<b>\$30,757</b>

The "Revenue Requirements" section and accompanying schedules summarized the basic differences between the parties. The final revenue requirements are summarized in the table below:

Original Rate Base	\$5,663,304
Times: Weighted Cost of Capital	5.46%
NOI Required for Return on Rate Base	30,756
Less: Adjusted Net Operating Income	(8,388)
Net Revenue Requirement	39,751
Gross Revenue Conversion Factor	101.5500%
Recommended Revenue Increase	39,751
Recommended Percentage Increase	21.52%

C. **Stipulation and Settlement Agreement.** The Parties' April 15, 2009 Notice of Settlement describes the terms of the Parties' settlement agreement as follows:

- (1) Adopts all OUCC accounting adjustments except OUCC's proposed System Development Charge, setting Petitioner's authorized revenue requirement at a 21.52% increase, (\$224,502 total revenue requirement) as outlined in the OUCC's report, Schedule 4, page 1;
- (2) Establishes an agreed-to System Development Charge of \$1,422 per Equivalent Dwelling Unit (EDU) as outlined in OUCC's Revised Schedule 9 (filed with the Notice); and
- (3) Doe Creek agrees to work with New Palestine Family Dentistry to resolve concerns regarding the proposed 1.4 EDU per chair factor.

Below is a bill comparison:

Flat Rate	Petitioner Proposal	OUCC Proposal	Settlement
Current Rates	\$39.50	\$39.50	\$39.50
Proposed Rates	\$53.31	\$48.00	\$48.00
Percent Increase	34.96%	21.52%	21.52%

Subsequent to submission of the settlement, Doe Creek advised the OUCC that it believed the cost of metering actual usage would be prohibitive. Doe Creek proposed to resolve the issue by reducing the EDU factor to 2.0 EDUs for the entire office until such time as increased use or building additions are made in order to accommodate expanded uses.

The Notice of Settlement also incorporates by reference the OUCC Report and Petitioner's accounting witness Krohn's Affidavit of Approval of Settlement, all of which further

explain the settlement terms and rationale.

**5. Commission Discussion and Findings.** 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 require that settlements be supported by probative evidence. 170 I.A.C. § 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 Indiana Code § 8-1-2, and that such agreement serves the public interest.

Having reviewed the Parties’ evidence, Notice of Settlement and supporting affidavit, the Commission finds the terms to be reasonable and in the public interest, and therefore approves the parties’ agreement. However, the documentation filed with Doe Creek’s application shows that Doe Creek obtained a loan without receiving approval from the Commission under I.C. § 8-1-2-76. Further, because this was a shareholder loan, it qualifies as an affiliate transaction, which must be filed with the Commission under I.C. § 8-1-2-49. In the future, Doe Creek must seek prior Commission approval for any proposed financing greater than twelve (12) months. Further, Doe Creek shall file the shareholder loan agreement with the Commission, and Doe Creek’s rates will not be effective until such agreement is filed.

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).

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

1. The settlement agreement set forth in the parties’ April 15, 2009 Notice of Settlement, an executed copy of which is attached hereto as Exhibit A, shall be and hereby is approved as modified herein.

2. Doe Creek shall be and is hereby authorized to modify its rate structure in accordance with the Settlement Agreement and to subsequently implement a rate increase of 21.52% effective upon issuance of this Order and completing the appropriate filings with the Water/Sewer Division of the Commission as set forth below.

3. Doe Creek shall be and is hereby authorized to modify its EDU charge for the New Palestine Family Dentistry office to 2.0 EDUs consistent with paragraph 4.C.(3) above. Any future proposed changes to this rate shall be submitted to the Commission for review.

4. Doe Creek shall file a copy of the shareholder loan agreement with the Commission as set forth in Paragraph 5.

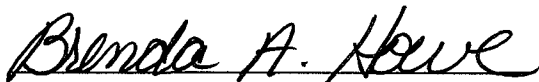
5. Doe Creek shall file with the Water/Sewer Division of the Commission a new schedule of rates and charges. Such new schedules of rates and charges shall be effective upon the filing of the shareholder loan agreement and approval by the Water/Sewer Division and shall apply to wastewater usage from and after the date of approval.

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

**HARDY, GOLC, LANDIS, AND ZIEGNER CONCUR:**

**APPROVED: JUN 10 2009**

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

  
**Brenda A. Howe,**  
**Secretary to the Commission**

COPY

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION )  
OF DOE CREEK SEWER UTILITY, )  
INC. FOR A NEW SCHEDULE OF )  
RATES AND CHARGES )

CAUSE NO. 43530-U

FILED

APR 15 2009

NOTICE OF SETTLEMENT

INDIANA UTILITY  
REGULATORY COMMISSION

The Indiana Office of Utility Consumer Counselor (OUCC) and the Doe Creek Sewer Utility Inc. (Doe Creek) hereby give notice to the Indiana Utility Regulatory Commission (IURC) of the following:

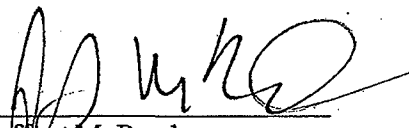
1. On July 7, 2008, Doe Creek submitted its application in this Cause. A public field hearing was held on February 9, 2009. OUCC filed its report on March 2, 2009. There are no interveners in this Cause.
2. OUCC and Doe Creek have reached an agreement to settle this cause. OUCC has made concessions to Doe Creek regarding OUCC's proposed adjustment (OUCC Schedule 9) to Doe Creek's proposed system development charge. Doe Creek has made concessions to OUCC by agreeing to all of OUCC's other accounting adjustments and recommendations.
3. OUCC's report (Section VI, pages 5-6) described Doe Creek's calculation of its proposed system development charge and explained OUCC's proposed two adjustments intended to exclude unamortized CIAC and a shareholder loan to Doe Creek. During settlement negotiations after OUCC's report was filed, Doe Creek explained that

it had not included recovery of the debt as a revenue requirement because it was included as part of the system development charge. Doe Creek felt that because the loan proceeds were used for plant expansion, it was more equitable for the costs to be recovered from new customers for whom the expansion was designed to serve. OUCC's original recommendation would prevent Doe Creek from recovering this expense. Including the debt in the system development charge calculation in this instance is fair and reasonable to both the ratepayers and the utility. Including the debt in the calculation results in a system development charge of \$1,421.00

4. The parties have attached Revised OUCC Schedule 9 (Attachment 1) that reflects the agreed-upon SDC calculation. This change does not affect any other calculations in OUCC's schedules as filed 3/2/09. The settlement will produce an agreed-upon rate increase equal to OUCC's recommended 21.52% (\$39,751). The parties have also attached a supporting affidavit from Petitioner's accountant and anticipate filing a joint proposed order in the near future.

5. Petitioner's representatives have reviewed this document prior to filing and have authorized OUCC to represent that Petitioner concurs with the representations included herein.

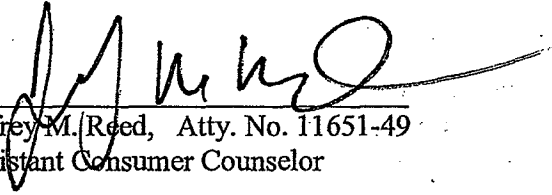
Respectfully Submitted,

  
\_\_\_\_\_  
Jeffrey M. Reed  
Assistant Consumer Counselor

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing has been served upon the following parties of record in the captioned proceeding by electronic mail on April 15, 2009.

Otto W. Krohn  
O.W. Krohn & Associates  
231 E. Main Street  
Westfield, IN 46074  
317-867-5888  
buzz@owkcpa.com



Jeffrey M. Reed, Atty. No. 11651-49  
Assistant Consumer Counselor

**INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR**  
115 W. Washington St. Suite 1500 South  
Indianapolis, IN 46204-2215  
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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

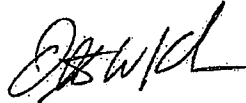
IN THE MATTER OF THE PETITION )  
OF DOE CREEK SEWER UTILITY, )  
INC. FOR A NEW SCHEDULE OF )  
RATES AND CHARGES )

CAUSE NO. 43530-U

AFFIDAVIT OF APPROVAL OF SETTLEMENT

Otto W. Krohn, CPA  
On behalf of the Petitioner  
Doe Creek Sewer Utility, Inc.

I, Otto W. Krohn, being a duly authorized representative of Doe Creek Sewer Utility, Inc. in connection with the pending Small Utility Rate Filing before the Indiana Utility Regulatory Commission (IURC), do hereby acknowledge the accuracy of the Notice of Settlement filed by the Indiana Office of Utility Consumer Counselor (OUCC). Specifically, we agree to the retail rate increase contained within the Settlement Agreement (21.52% across-the-board) as well as the proposed System Development Charge noted therein (\$1,421 per Equivalent Dwelling Unit – EDU). The System Development Charge is intended to be utilized to repay the Utility's loan for the wastewater treatment plant upgrades, as the retail rates do not include a revenue requirement for debt retirement. We also hereby acknowledge the good faith and cooperative efforts of the OUCC staff in arriving at the proposed Settlement Agreement.



Otto W. Krohn, Executive Partner  
O. W. Krohn & Associates, LLP  
231 E. Main St.  
Westfield, IN 46074

*Kathleen Hancock* Expiration 8-16-2014

I, Kathleen Hancock, a Public Notary, do hereby certify that Otto W. Krohn appeared before me and duly signed this affidavit on this 14<sup>th</sup> day of April, 2009

KATHLEEN HANCOCK  
Notary Public - Sec 1  
State of Indiana  
My Commission Expires Aug 16, 2014



**DOE CREEK SEWER UTILITY, INC.  
 CAUSE NUMBER 43530-U**

**Calculation of System Development Charge**

Net Utility Plant in Service @ 12/31/07	\$1,668,673
Less: Accumulated Depreciation	(678,363)
Net CIAC	(444,291)
 Plant Equity Subject to Charge	 546,019
 Number of Equivalent Users	 <u>384</u>
 System Development Charge	 <u><u>\$1,422</u></u>

Type of Service	Equivalency Factor (EDU)	Petitioner Proposed	OUCC
Single Family Residence	1.0	\$2,500	\$1,422
Two Family Residence	1.8	\$4,500	\$2,559
Multi-family & Apartments - Per Unit	0.7	\$1,750	\$995
Mobile Homes & Parks - Per Unit	0.8	\$2,000	\$1,138
Motels & Hotels - Per Unit	0.4	\$1,000	\$569
Service Clubs & Churches - Per 200 Members or Fraction			
With Kitchen:	1.0	\$2,500	\$1,422
Without Kitchen:	2.0	\$5,000	\$2,844
Office Use - Per 1,000 Square Feet	0.5	\$1,250	\$711
Health Service Office - Per Exam Room	0.6	\$1,500	\$853
Person Care - Per Chair	0.4	\$1,000	\$569
Restaurant - Per Seat	0.1	\$250	\$142
Food Drive in - Per Car Space:	0.2	\$500	\$284
Fast Food Per Employee:	0.2	\$500	\$284
Food and Drug Retail Service Per Emp.	0.2	\$500	\$284
Laundry - Per Washer	1.3	\$3,250	\$1,849
Car Wash - Per Day	2.0	\$5,000	\$2,844
Service Station	1.5	\$3,750	\$2,133
Retail Sales & Service - Each 3			

Employees or Fraction Thereof Manufacturing - Per 8 Employee	1.0	\$2,500	\$1,422
- Sanitary Use Only Manufacturing Other - As Determined by DCSU	1.0	\$2,500	\$1,422
Warehouses - Per 40,000 Square Feet	1.0	\$2,500	\$1,422
Bars & Cocktail Lounges - Per Seat - Without Restaur.	0.1	\$125	\$71
Bowling Alley - Per Alley	0.4	\$1,000	\$569
Bowling Alley with Bar - Per Alley	2.0	\$5,000	\$2,844
Dentist Office - Per Chair	1.4	\$3,500	\$1,991
Physicians' Office - Per Examining Room	0.6	\$1,500	\$853
Schools with Gym & Cafeteria - Per Student	0.1	\$150	\$85
Speculative Commercial/Industrial - Per Acr	0.0	\$100	\$57