

ORIGINAL

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

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

**PETITION OF COMMUNITY UTILITIES OF)
INDIANA, INC. FOR APPROVAL OF (A) A)
NEW DISTRIBUTION SYSTEM)
IMPROVEMENT CHARGE (“DSIC”))
PURSUANT TO IND. CODE CHAP. 8-1-31; (B))
A NEW RATE SCHEDULE REFLECTING)
THE DSIC; AND (C) INCLUSION OF THE)
COST OF ELIGIBLE DISTRIBUTION)
SYSTEM IMPROVEMENTS IN ITS DSIC)**

CAUSE NO. 45998 DSIC 1

APPROVED: APR 24 2024

ORDER OF THE COMMISSION

**Presiding Officers:
David E. Veleta, Commissioner
Kristin E. Kresge, Administrative Law Judge**

On December 28, 2023, Community Utilities of Indiana Inc. (“CUII”) filed with the Indiana Utility Regulatory Commission (“Commission”) its Petition for approval of a distribution system improvement charge (“DSIC”) pursuant to Ind. Code ch. 8-1-31 and 170 IAC 6-1.1. On January 5, 2024, CUII filed revisions to its case-in-chief and a revised procedural schedule.

On January 24, 2024, Lakes of the Four Seasons Property Owners’ Association (“LOFS”) filed its Petition to Intervene, which was granted by docket entry dated February 1, 2024. The Indiana Office of the Utility Consumer Counselor (“OUCC”) and LOFS filed their respective cases-in-chief on February 5, 2024.

On February 12, 2024, CUII and OUCC filed a Joint Notice of Agreement in Principle and Motion to Modify Procedural Schedule.

On February 14, 2024, CUII filed the rebuttal testimony of Colin Webb, Area Manager for Water Services Corporation, which provides administrative services to CUII, and settlement and rebuttal testimony of Andrew W. Dickson, Financial Planning and Analysis Manager for Water Service Corporation, along with a copy of the stipulation and settlement agreement between CUII and the OUCC (“Settlement Agreement”). On February 14, 2024, the OUCC filed the settlement testimony of Jason T. Compton, Utility Analyst in the Water and Wastewater Division for the OUCC.

On February 21, 2024, LOFS filed the testimony of Rick Cleveland, LOFS’ Community Manager, in opposition to the Settlement Agreement.

The Commission set this matter for an Evidentiary Hearing to be held on March 20, 2024, at 12:30 p.m. in Room 222, PNC Center, 101 West Washington Street, Indianapolis, Indiana. CUII, the OUCC, and LOFS participated in the hearing by counsel, and the prefiled evidence of the parties, including the Settlement Agreement, was offered, and admitted into the record without objection.

Based on the applicable law and evidence presented, the Commission now finds:

1. **Notice and Jurisdiction.** Due, legal, and timely notice of the public hearing in this Cause was given and published as required by law. CUII is a “public utility” within the meaning of that term in Ind. Code § 8-1-2-1 and is subject to the jurisdiction of the Commission in the manner and to the extent provided by the laws of Indiana. Under Ind. Code ch. 8-1-31 and 170 IAC 6-1.1, the Commission has jurisdiction over DSIC proceedings. As such, the Commission has jurisdiction over CUII and the subject matter of this proceeding.

2. **Petitioner’s Characteristics.** CUII is an operating public utility incorporated under the laws of Indiana. CUII provides water service to approximately 5,300 equivalent residential connections (“ERCs”) and wastewater service to approximately 3,500 ERCs. CUII renders water and wastewater utility service by means of utility plant, property, equipment, and related facilities owned, operated, managed, and controlled by it that are used and useful for the convenience of the public in the provision of water and wastewater service. CUII’s service area includes portions of Jasper, Lake, Newton, and Porter Counties.

3. **Relief Requested.** CUII seeks approval of a DSIC pursuant to Ind. Code ch. 8-1-31, a new rate schedule reflecting the DSIC, and approval of the recovery of costs of eligible Distribution System Improvements (“Improvements”). As a result of the Commission’s February 1, 2023 Order in CUII’s last general rate case in Cause No. 45651 (“2023 Rate Order”), Petitioner’s DSIC charge was maintained at zero.

In this Cause, CUII proposes to include in rates non-revenue producing projects placed in service between October 1, 2023 and December 20, 2023, which were not included in rate base in Cause No. 45651. These projects consist primarily of automatic meter reading (“AMR”) meters and additional in-service watermains and services related to projects whose in-service balances as of September 30, 2023 were included in CUII’s rate base in Cause No. 45651. Projects and retirements from its general capital improvements for its transmission and distribution mains, service lines, and hydrants are also included.

CUII proposed a DSIC surcharge per equivalent 5/8-inch meter of \$1.47 to produce total annual DSIC revenues of \$95,182. As a result of the Settlement Agreement, CUII updated its request to a monthly DSIC charge of \$0.67 per equivalent 5/8-inch meter to produce total annual DSIC revenues of \$43,356.

4. **Petitioner’s Direct Evidence.** CUII presented the direct evidence of Andrew W. Dickson, Financial Planning and Analysis Manager for Water Service Corporation, which provides administrative services to CUII.

A. **Calculation of DSIC 1.** Mr. Dickson testified CUII’s proposed DSIC is based on a reasonable estimate of sales for the period in which the DSIC will be in effect. He stated CUII will adjust the DSIC for any difference between the revenues recovered by the DSIC and the actual DSIC costs at the end of each 12-month period. He testified cumulative DSIC revenues are capped at 10% of the base revenue level approved in the last general rate order. Mr. Dickson stated that if improvements are included in CUII’s rate base in future rate case orders, the DSIC will be reset to zero to reflect the recovery of the capital costs and depreciation. He testified CUII does not have a DSIC surcharge in effect. Mr. Dickson stated the DSIC filing captures the assets placed in service between October 1, 2023 and December 20, 2023, which were not included in rate base in the 2023 Rate Order.

Mr. Dickson explained the rate of return used in this proceeding is CUII's weighted average cost of capital provided in CUII's Cause No. 45651 Phase II rate base update. He testified the long-term debt cost rate used in the calculation is the average embedded debt cost as of September 30, 2023. He stated the cost of common equity of 9.50% is the as-approved return authorized by the 2023 Rate Order. He stated this methodology for determining the rate of return is prescribed by the DSIC statute. He testified CUII's Attachment AWD-2 shows the derivation of the weighted average cost of capital of 7.46% and the pre-tax rate of return of 9.03%. As shown on Attachment AWD-2, CUII calculated a gross revenue conversion factor of 1.331 utilizing those taxes that will be in effect when the DSIC revenues are billed. He stated these taxes are the State Income Tax rate of 4.9% and the Federal Income Tax rate of 21%. Mr. Dickson testified the gross revenue conversion factor was multiplied by the weighted cost of the non-debt components of the capital structure to determine the pre-tax return of 9.03%.

Mr. Dickson testified Petitioner determined its depreciation expense of \$17,262 by using the composite depreciation rate of 2% for its water plant as ordered by the Commission.

Mr. Dickson testified the annual revenue requirement for CUII's DSIC additions is calculated as the pre-tax return on those DSIC additions plus the annual depreciation expense for those same additions. He stated CUII identified \$863,107 in DSIC-eligible additions, for which a pre-tax return of 9.03% is \$77,920. He said when combined with the \$17,262 in annual depreciation expense for these same additions, the DSIC revenue requirement is \$95,182. He testified CUII's approved water revenue from the 2023 Rate Order is \$4,020,089, which leads to a limit of \$402,089 that CUII can recover through a DSIC. He stated the proposed DSIC revenue requirement of \$95,182 is below the 10% limit, and thus the cap is inapplicable.

B. Description of DSIC Improvements. Mr. Dickson outlined CUII's compliance with the Commission's DSIC rules in 170 IAC 6-1.1 He stated CUII made a *prima facie* case for the eligibility of the improvements and the reasonableness of the proposed charges by submitting all required supporting documents.

Mr. Dickson stated CUII's projects are listed in Attachments AWD-2 and AWD-3 and are in service. He testified an adjustment was made in Attachment AWD-2 to identify the portions of those projects that were already recovered in CUII's rates and charges from Cause No. 45651. He stated the projects CUII has proposed for recovery in this DSIC will not result in an increase in revenue resulting from the connection of new customers to the utility's distribution system. He explained Attachment AWD-3 contains project descriptions, explanations, benefits, and age of retired plant.

Mr. Dickson testified regarding the funding of the improvements. He stated projects included in this DSIC were funded by CUII and that all necessary local, state, and federal permits, approvals, and authorizations applicable to the projects have been obtained. He stated no affiliates were directly or indirectly engaged in connection with the installation of projects listed in Attachment AWD-2.

Mr. Dickson testified CUII has a five-year distribution infrastructure replacement plan; CUII will continue to replace distribution infrastructure over the course of the next five years. He stated CUII will spend between \$500,000 and \$700,000 per year replacing watermains and service lines in its Twin Lakes service area that it identifies as prone to leaks, breaks, or otherwise in need of replacement. Mr. Dickson stated CUII plans to spend between \$300,000 and \$500,000 per year replacing watermains, and service lines in its Indiana Water Service Inc. service area that it identifies as prone to leaks, breaks, or otherwise in need of replacement.

Mr. Dickson described the \$776,822 in AMR meter investments reflected in Attachment AWD-2. He explained the 2023 Rate Order required CUII to make a ratemaking adjustment to remove amounts of AMR meter investment already placed in service, but these replacements are imperative to CUII's ability to provide and measure its provision of reliable utility service. He stated CUII began accuracy testing its removed meters in 2023, the results were not available during Cause No. 45651; it has been determined 54% of the removed meters failed with fast readings. An additional 5% failed with slow readings, for a total 59% failure rate. He testified CUII will begin testing its new meters in 2024 at a 10% rate so as to position CUII to have 100% of its new meters tested by year 10 of these current installations. He stated CUII has included not only the AMR investments but also the full retirement amounts from these installations in its DSIC, as shown in Attachment AWD-2. He testified the retirements reduce the net DSIC meter investment by \$238,192.

Mr. Dickson next explained that the 2023 Rate Order determined 10% of CUII's total meter replacement effort should be recoverable per year, but only approved 10% for Phase I and 20% for Phase II. However, 756 meters had already been invoiced by the end of the historical test period (*i.e.*, before Phase I) at a cost of \$214,298.04. He said because these meters were in service, used, and useful prior to Phase I, a consistent application of the 2023 Rate Order would suggest that at least \$124,470 of these costs be included in CUII's rate base as of September 30, 2021. He said CUII has also continued installing meters, and thus an additional 10% of meter costs should be recoverable for installations after Phase II. In addition, Mr. Dickson noted that actual meter replacement costs have been higher than those estimated by the Commission for purposes of the 2023 Rate Order. More specifically, he provided a table showing that total replacement costs (including actuals to-date and forecasted remaining amounts) total \$1,611,679.77, meaning 10% should be \$161,167.98 rather than the \$124,470 identified in the 2023 Rate Order. He therefore stated it would be consistent with the 2023 Rate Order to include at least \$644,671.92 in meter installation costs, or an additional \$395,731.92 above the current meter replacement costs CUII is recovering through base rates.

Mr. Dickson discussed the \$223,653 in watermain and service line replacement projects, which were completed after September 30, 2023. He stated work completed prior to September 30, 2023, was in-service, used, and useful for customers. Restoration efforts have continued to rehabilitate disturbed landscaping and roadways, and other service lines have been replaced. Mr. Dickson testified the new costs are in-service, used, and useful for customers at present, totaling an additional \$223,653 in eligible DSIC investments.

Mr. Dickson described the \$110,617 in net general ledger additions included in this filing. He testified CUII has determined additional, small projects have been completed to address its transmission and distribution mains, service lines, and hydrants. He stated these additions occur on an as-needed basis. He stated the activities undertaken by CUII through these additions are detailed in CUII's Attachment AWD-3, which provides the information needed to determine the costs are eligible DSIC additions.

5. OUC's Evidence. The OUC presented the evidence of Jason T. Compton, Utility Analyst, Water and Wastewater Division, James T. Parks, Senior Analyst, Water and Wastewater Division, and Kristen Willoughby, Utility Analyst, Water and Wastewater Division.

Mr. Compton recommended a DSIC surcharge of \$0.61 per equivalent 5/8-inch meter. He stated CUII seeks approval to earn a return on and of \$1,111,092 for water rate base projects. He testified the largest request is CUII's AMR meter replacements, totaling \$776,823. He stated

including the entire remaining cost of the meter replacement projects in the DSIC contravenes the 2023 Rate Order. He stated CUII seeks to include investments for watermain and service line projects as well as “net general ledger additions” for mains, service lines, and hydrants installed between October 1, 2023 and December 20, 2023, totaling an additional \$334,269. He testified these amounts are offset by retirements for a total net increase in rate base of \$863,107.

Mr. Compton testified his calculation differs from CUII’s calculation due to: (1) exclusion of incidental main break investments; (2) partial exclusion of meter replacement project investments; and (3) reduction of offsetting retirements related to (1) and (2).

Mr. Compton stated CUII included \$50,684 related to a watermain break and \$4,602 of incidental investments in Net General Ledger Additions that were incurred due to a main break. He stated main break repair costs should not be recovered through a DSIC, citing the Commission’s Order in Cause No. 42743 DSIC 3. He testified incidental investment to address main breaks is not part of a planned process to improve CUII’s distribution system as the Commission described in Cause No. 42743 DSIC 3. He stated the \$50,684 incidental investment is not a DSIC eligible project. He recommends the Commission exclude both the \$50,684 and \$4,602 amounts from the final calculation of the DSIC.

With respect to meter replacement projects, Mr. Compton stated he updated the DSIC calculation to exclude recovery of all but 10% (\$124,470) of the cost of replacing CUII’s AMR meters, consistent with the Commission’s 2023 Rate Order. He included an estimate for retirements of (\$38,169) to be netted against the \$124,470 of meter replacements. Overall, he reduced the amount of additions related to meter replacements by \$652,353 and the amount of DSIC additions (net of retirements) related to meter replacements by \$452,330. He explained why the retirement offsets proposed by the OUCC are less than CUII’s retirement offsets and explained the OUCC’s calculations.

Mr. Compton recommends the Commission approve a DSIC charge of \$0.61 per month per 5/8-inch equivalent meter. He testified revenues will be generated in the amount of \$39,365 above CUII’s currently approved rates and ensures rate recovery is limited to DSIC-eligible projects and costs.

Mr. Parks summarized CUII’s water operations and identified discrepancies in asset reporting between CUII’s draft Asset Management Plan and its Commission Annual Reports. He recommended CUII submit an up-to-date watermain inventory in its Annual Reports on page W-9 to accurately report CUII’s watermain assets by diameter and pipe type and provide an annual accounting of watermains added, replaced, and retired. Mr. Parks testified CUII should also accurately report the cost of all watermain and service line additions and retirements on pages W-3(a) and W-3(c).

Mr. Parks expressed concern with information provided by CUII in the DSIC filing. He testified an agreement was reached in Cause No. 44646 regarding CUII’s DSIC filings and the supporting information filed contemporaneously. He stated the agreed-upon framework was to be followed.

Mr. Parks testified he requested information about the Hidden Valley Drive service line replacements from the last ten years. His review of CUII’s discovery responses led him to conclude three service lines on Hidden Valley Drive and two service lines on Wallhaven Ct. and Walnut Hill Circle had already been replaced and the replacement costs included in rate base. He noted CUII’s

previous contractor had invoiced for full replacement of the curb stops, curb boxes, and polyethylene service lines with copper service lines. CUII severed its relationship with this contractor due to work billed, but never completed. Mr. Parks testified there was no engineering or operational basis to replace these service lines again and that during replacement, the contractor and engineer should have detected the polyethylene lines had already been replaced with copper service lines. He recommended the matter be investigated and addressed no later than CUII's next rate case to determine whether the service lines were already included in rate base. He stated if these lines had already been replaced, the invoiced amounts plus CUII captime and lawn restoration costs should be removed from rate base.

Ms. Willoughby testified regarding CUII's inclusion of meter replacements in the DSIC. She stated information CUII provided does not justify departing from the Commission's determination in Cause No. 45651, and CUII should not receive 10% of meter replacement costs for meters replaced in 2021 prior to the start of Phase I rates. Ms. Willoughby stated that while she reviewed receipts provided by CUII for meter replacements, no receipts were provided for 2023 and some receipts could not be identified. She recommended the Commission deny recovery of the incremental \$36,697.98 in costs for each 10% period. She testified that to be consistent with the 2023 Rate Order, CUII should be permitted to include in this DSIC another 10% of its meter replacement costs; consequently, she recommended the Commission approve \$124,470 for new meter replacements.

6. LOFS' Evidence. Intervenor LOFS presented the testimony of Rick Cleveland, Community Manager for LOFS. Mr. Cleveland testified CUII's request attempts to circumvent the 2023 Rate Order. He states CUII seeks to recover through rates the costs of a comprehensive AMR replacement program that rewards CUII for its poorly managed AMR practices. He contended CUII's AMR replacements are largely driven by the decision of its corporate parent to deploy new meters across the country.

Mr. Cleveland testified it is not appropriate to increase rates for CUII's decision to replace AMR meters. He stated CUII replaced all the water meters within its system starting in 2021, rather than on an ongoing basis. He stated that the evidence presented in the 2023 Rate Case suggests that CUII's AMR replacements were imprudent and appeared to be a response to poor planning and execution of prior meter replacements. He stated the 2023 Rate Case limited CUII's recovery of meter replacement costs to \$124,470 and \$248,940 for Phase II. He stated CUII seeks recovery of an additional \$395,731.92 above the current meter replacement costs CUII is recovering through base rates. He testified CUII has not demonstrated its AMR replacement program is necessary, prudent, or that it conducted due diligence to confirm that the replacements were the least expensive alternative. Mr. Cleveland recommends the Commission deny CUII's requested DSIC in its entirety.

7. Petitioner's Settlement and Rebuttal Evidence. Mr. Dickson's testimony was provided to support the reasonableness of the Settlement Agreement between CUII and the OUCC, explain the terms of the Settlement Agreement, and support the Settlement Agreement being found in the public interest and approved by the Commission. His testimony also responded to the testimony of LOFS witness Mr. Cleveland.

Mr. Dickson testified Sections I.1 and I.2 of the Settlement Agreement reflect CUII's acceptance of the OUCC's removal of \$50,684 in incidental main break investments and associated retirements (\$959), as well as OUCC's proposed removal of \$4,602 in incidental investments in net general ledger additions to service lines. He stated incidental investments in mains and service lines are an important part of retaining and improving the level of service CUII is providing to customers.

He testified CUII maintains these investments were reasonable and necessary for utility service, but CUII is willing to remove them from the calculation of the DSIC for purposes of settlement.

Mr. Dickson explained Section I.3 states CUII accepts OUCC’s proposed limit of 10% of meter replacement costs in this DSIC, and that the OUCC agrees that for purposes of this DSIC that cost is to be \$161,168. He stated Section I.4 accepts the OUCC’s averaging of 10% of the past 10% meter retirements, totaling (\$38,169). He noted the OUCC expressed concern CUII had not justified the increase in forecasted meter replacement costs. CUII disagrees; noting its meter replacement cost will exceed the approximately \$1.2 million cost identified in Cause No. 45651, including the following table from Mr. Dickson’s direct testimony:

Description	Project No.	Actuals to-date	Forecast	Total
2021 AMR Installations	2021049	\$505,941.74	-	\$505,941.74
2022 AMR Installations	2022168	519,820.64	-	519,820.64
2023/2024 AMR Installations	2022288	508,522.34	77,395.05	585,917.39
Total Replacement Cost				\$1,611,679.77
10% of Total Replacement Cost				\$161,167.98

Mr. Dickson stated CUII has replaced approximately two-thirds of its meters and has actual meter replacement costs through 2023. He testified as shown in Attachment AWD-1R, the project cost details for CUII’s 2023/24 meter installations total \$532,269 to-date (updated from the \$508,522.34 actuals presented in direct testimony and shown in the table above). He stated the total cost of replacement has already exceeded the \$1,244,700 forecasted in Cause No. 45651 and is fully substantiated by project cost details and invoices. Mr. Dickson testified, for purposes of settlement, CUII is willing to accept inclusion of 10% of CUII’s meter replacement costs of \$161,167.98 presented in CUII’s case-in-chief.

Mr. Dickson testified CUII accepts the OUCC’s recommendation to provide up-to-date watermain inventory in its Annual Reports, as reflected in Section I.6 of the Settlement Agreement. He stated CUII and the OUCC also reached agreement on the format for future DSIC filings. He stated that while CUII worked diligently to provide the OUCC with all requested information in this DSIC, CUII also recognizes that the process could be improved going forward. He stated as set forth in Section I.7 of the Settlement Agreement, CUII agrees to discuss the format for future DSIC filings with the OUCC prior to filing or, in the alternative, follow the framework set forth in OUCC witness Mr. Parks’ testimony.

Mr. Dickson stated CUII agrees to Mr. Parks’ recommendation to investigate five service line replacements no later than its next rate case, as reflected in Section I.8 of the Settlement Agreement. He said CUII has already begun the investigation and the preliminary findings confirm the three addresses on Hidden Valley Drive were not replaced as originally indicated in a discovery response to the OUCC. He stated CUII will continue its investigation and provide an update in its next rate case.

Mr. Dickson provided a recalculation of the DSIC factor resulting from the Settlement Agreement. He stated as reflected in Attachment AWD-3R and stated in Section I.5 of the Settlement Agreement, the resulting monthly DSIC factor is \$0.67 per 5/8” meter. He testified this is a substantial

decrease from the \$1.47 factor presented in CUII's case-in-chief, and reasonably addresses the rate impact concerns raised in the testimony of the other parties.

Mr. Dickson testified settlement is a reasonable means of resolving a proceeding in a manner that is fair and balanced to all concerned. He stated the Settlement Agreement represents the result of good faith, arms' length negotiations. He noted experts were involved with legal counsel and substantial time was devoted to the settlement discussions. He stated while LOFS ultimately decided not to join the Settlement Agreement, LOFS was included in settlement negotiations. In his opinion, the Settlement Agreement is in the public interest because it reasonably addresses the concerns raised in this proceeding and provides a balanced, cooperative outcome of the issues in this Cause. He added approval of the Settlement Agreement will allow CUII to continue to make investments necessary for the provision of reasonable and adequate service to its customers, while mitigating the rate impact of the associated investments. He said the Settlement Agreement provides certainty going forward and provides a reasonable framework for future DSIC filings and requested the Commission approve the Settlement Agreement in its entirety.

Mr. Dickson next responded to LOFS witness Mr. Cleveland's testimony. He disagreed with Mr. Cleveland's characterization of CUII's historical rate changes and stated those changes do not impact the reasonableness of the investments included in this DSIC filing or the recovery of the associated costs. Mr. Dickson testified CUII has managed its water and sewer systems with customer rates in mind. He explained CUII has included projects for which the Commission has already authorized some level of recovery and has provided evidence to the changed cost of those projects and efforts. He stated CUII provided evidence regarding its meter replacements that justifies their replacement and has reached agreement with the OUCC as to the appropriate level of expenses and investment to reflect in DSIC rates. He testified CUII refuted Mr. Cleveland's speculation that CUII's meter replacements are driven by a decision of its corporate parent. He testified CUII's meters failed and needed to be replaced.

Mr. Dickson responded to Mr. Cleveland's discussion of the updated cost of meter replacements. He stated of the total \$1,611,679.77 identified in this Cause, only \$53,468 remains forecasted; the rest of these costs have been incurred and are serving customers today.

Mr. Dickson testified Mr. Cleveland's discussion of CUII's meter replacement timing lacks nuance. He explained meters are typically replaced on an "as-needed" basis, rather than on an "on-going" basis. He stated meter infrastructure should be replaced when appropriate to maintain continuity of service.

Mr. Dickson agreed with Mr. Cleveland that the Commission is not required to approve cost recovery of investments that are imprudent. He testifies the Commission has not found CUII's meter replacements to be imprudent and has ordered partial recovery of CUII's replacement costs for meters. He stated CUII's request is for recovery of the rest of CUII's replacement costs considering new evidence regarding rampant flow test failures and the meter battery failures. He stated CUII has discussed this issue with the OUCC and LOFS and arrived at a reasonable compromise with the OUCC that allows for recognition of 10% of the meter replacements through this DSIC filing.

Colin Webb, Area Manager for CUII, testified Mr. Cleveland's assertion that AMR replacements are driven by CUII's parent company is not supported by the record. He reiterated the decision to install new AMR meters was based on operational needs, not a corporate directive. He stated the batteries from the meters failed to send signals on a widespread basis, preventing CUII from

acquiring meter reads. He noted that the meters were reading outside of acceptable ranges on a widespread basis.

Mr. Webb responded to Mr. Cleveland's assertion that CUII's AMR replacements were due to poor planning and execution of prior meter replacements. He explained that while a more staggered approach to meter replacement would be ideal, CUII needs functioning meters. He stated given the widespread issues with the old meters, CUII's AMR replacement project was a reasonable response and necessary to continue to provide utility service. He stated the fact remains the new meters are in-service and it is reasonable and appropriate that the costs of utility plant in service be reflected in the cost of service. He concluded Mr. Cleveland's suggestion otherwise is contrary to established regulatory practice and should be rejected.

8. OUCC's Settlement Evidence. Mr. Compton testified the OUCC had concerns regarding whether certain projects were DSIC eligible and whether service lines had previously been replaced. He stated CUII and the OUCC have addressed these concerns in the Settlement Agreement.

Mr. Compton testified CUII accepted his proposed removal of \$50,684 in incidental main break investments, along with the associated retirements (\$959). He explained CUII accepted his proposed removal of \$4,602 in incidental investments in net general ledger additions to service lines. He said CUII also accepted his proxy retirement calculation for the proposed meter replacement project. Per the Settlement Agreement, CUII agreed with OUCC witness Mr. Parks' recommendation to provide up-to-date watermain inventory in its Commission Annual Reports. He stated CUII agreed with Mr. Parks to discuss the format and information to be provided to the OUCC prior to filing in future DSIC filings or to follow the framework set forth in Mr. Parks' testimony. He agreed to investigate the five service line replacements Mr. Parks discussed no later than its next rate case.

Mr. Compton next identified components of the Settlement Agreement where the OUCC agreed with CUII's position. He stated the OUCC's position with respect to meter replacement costs was based on the 2023 Rate Order, which determined that CUII's reasonable and allowed rate base additions for meter replacements should be limited to 10% per year or \$124,470 per year. He noted the OUCC's testimonial position was that with respect to meters replaced, the value to be included in DSIC 1 should be 10% of the cost that was established to be \$124,470 for purposes of Phase I and Phase II. He explained that in exchange for settlement of all issues presented in this DSIC and as identified in the Settlement Agreement, the OUCC accepted CUII's position that the value to be used for eligible DSIC meter replacement additions in DSIC 1 is \$161,168. The OUCC also accepted CUII's position that the \$4,602 of incidental investments in net general ledger addition to service lines was not associated with any retirements.

Mr. Compton explained the OUCC agreed to strike part of OUCC witness Ms. Willoughby's testimony regarding CUII's meter testing. The parties agreed meter testing need not be addressed in this DSIC. He noted neither party intends to waive any argument with respect to meter testing in any subsequent proceeding.

Mr. Compton stated the settled meter replacement investment of \$161,168 is in the public interest. He testified settlements are beneficial and in the public interest because they promote certainty, efficiency, and reduction in litigation costs. He stated the OUCC presented evidence that 10% of the cost of meter replacement is \$161,168. He noted that while the OUCC accepts that amount

for purposes of this DSIC proceeding, the Settlement Agreement does not prohibit the OUCC from contesting that value or cost in any subsequent proceeding.

Mr. Compton testified that in total, the agreed upon DSIC would recover \$43,356 of additional operating revenues above CUII's currently approved rates through a \$0.67 monthly DSIC charge per equivalent 5/8" meter. Of the overall \$43,356 of additional operating revenue, it would provide a \$35,493 return on its investments and a \$7,863 return of its investments (depreciation expense) He testified that the Settlement Agreement represents a 1.08% increase in total water operating revenues over the Phase II rates approved in Cause No. 45651.

Mr. Compton concluded the Settlement Agreement is in the public interest. He stated the Settlement Agreement reflects compromise and resolves the disputed issues in this proceeding without further expenditure of the time and resources of the parties in litigating the contested issues. It assures certainty of what is included as DSIC-eligible projects and what is paid for by ratepayers. He recommended the Commission approve the Settlement Agreement in its entirety.

9. LOFS Testimony in Opposition to Settlement. Mr. Cleveland stated LOFS opposes the Settlement Agreement on the grounds that it does not resolve the concerns raised by LOFS. He testified: (1) CUII's AMR replacement project has already been reviewed in Cause No. 45651 and CUII's request for recovery of those costs was denied; (2) CUII's meter replacement program is unnecessary and unreasonable because CUII failed to demonstrate it pursued less costly alternatives; and (3) LOFS customers should not bear the costs associated with the meter replacements. Mr. Cleveland recommends the Commission reject the Settlement Agreement.

10. Commission Discussion and Findings. Settlement is a reasonable means of resolving a controversial proceeding in a manner that is fair and balanced to all concerned. The Settlement Agreement represents the Settling Parties' proposed resolution of the issues in this Cause. As the Commission has previously discussed, 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. 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.

Any Commission decision, ruling, or order, including 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. v. Public Service Co.*, 582 N.E.2d 330 (Ind. 1991)). The Commission's procedural rules require settlements to be supported by probative evidence. Before approving the Settlement Agreement, the Commission must determine 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.

The Commission has before it substantial evidence from which to determine the reasonableness of the terms of the Settlement Agreement, including the prefiled testimony of CUII and the OUCC as well as the testimony and exhibits in support of the Settlement Agreement and the testimony in opposition filed by LOFS. The Settlement Agreement, a copy of which is attached hereto and incorporated by reference, reflects the Settling Parties' agreement that CUII's DSIC should be

approved with some modifications. As discussed below, substantial evidence shows, and we find, that CUII's DSIC, as modified by the Settlement Agreement, is reasonable, consistent with Ind. Code ch. 8-1-31, in the public interest, and should be approved.

A. DSIC Requirements and Calculation. Ind. Code ch. 8-1-31 requires the Commission to approve a DSIC to allow a water utility to adjust its basic rates and charges to recover a pre-tax return, depreciation expense, and property taxes, on eligible infrastructure improvements. Ind. Code § 8-1-31-5.5 states as follows:

Sec. 5.5. As used in this chapter, "infrastructure improvement costs" means the following:

- (1) For a public utility:
 - (A) depreciation expenses;
 - (B) property taxes to be paid by the public utility based upon the first assessment date following placement in service; and
 - (C) pretax return;associated with eligible infrastructure improvements.

Further, Ind. Code § 8-1-31-5 defines eligible infrastructure improvements for water distribution infrastructure of a public utility to include new, used, and useful water utility plant projects that:

- (a) do not increase revenues by connecting to new customers;
- (b) are in service and used and useful; and
- (c) were not included in the public utility's rate base in its most recent general rate case.

Under Ind. Code § 8-1-31-6, the rate of return allowed on eligible infrastructure improvements is equal to the public utility's weighted cost of capital. Ind. Code § 8-1-31-12 provides that the cost of common equity to be used in determining the weighted cost of capital shall be the most recent determination by the Commission in a general rate proceeding of the public utility unless the Commission finds that such determination is no longer representative of current conditions.

In 2017, the Indiana Legislature passed House Enrolled Act 1519, which changed how the DSIC surcharge is to be calculated. In the past, the surcharge was to be calculated as a percentage that was applied to both the consumer's volumetric and metered service charge revenues for all rate groups. Now, Ind. Code § 8-1-31-8, as amended by P.L. 91-2017 (effective July 1, 2017), states as follows:

Sec. 8. (a) Except as provided in subsection (d), an eligible utility may file with the commission a petition setting forth rate schedules establishing an amount that will allow the adjustment of the eligible utility's basic rates and charges to provide for recovery of infrastructure improvement costs. The adjustment shall be calculated as a monthly fixed charge based upon meter size.

As a result, CUII is required to calculate the surcharge applicable to the total DSIC revenue requirement as a fixed charge based upon a meter equivalency size.¹

B. Eligible Infrastructure Improvement Costs. Petitioner's case-in-chief identified net investor-supplied DSIC additions of \$863,107. Both the OUCC and LOFS challenged the eligibility of CUII's capital investments. In the Settlement Agreement, CUII agreed to remove \$50,684 in incidental main break investments and associated retirements (\$959), as well as \$4,602 in incidental investments in net general ledger additions to service lines. CUII and the OUCC further agree to \$161,168 in meter replacement investment, resulting in total net investor supplied DSIC additions of \$393,148.

LOFS witness Mr. Cleveland recommended complete denial of CUII's requested DSIC, as originally proposed and as settled. LOFS does not dispute the DSIC improvements identified by CUII: (a) do not increase revenues by connecting the distribution or collection system to new customers; (b) are in service; and (c) were not included in the public utility's rate base in its most recent general rate case. LOFS asserts CUII's request should be denied based on the 2023 Rate Order. We disagree. The record reflects the eligible infrastructure improvements, as modified by the Settlement Agreement, include only 10% of Petitioner's total meter replacement costs, which is consistent with the determination in Cause No. 45651 that limited recoverable annual meter replacement costs to 10% of the total meter replacement project costs. The Commission finds CUII demonstrated it has experienced actual meter replacement cost increases above the \$1,244,700 amount identified in Cause No. 45651. Based on the record, we find total net investor supplied DSIC additions of \$393,148, as agreed to by CUII and the OUCC, are appropriate for inclusion in this DSIC.

C. Calculation of the DSIC Surcharge. In accordance with Ind. Code § 8-1-31-8, CUII calculated the DSIC surcharge in this proceeding as a monthly fixed charge based upon meter size, which is to be recovered over a 12-month period. Based on the evidence of record, the Commission finds CUII has correctly calculated the DSIC surcharges.

D. Revenues from the DSIC Surcharge. The Settlement Agreement provides for total DSIC revenues of \$43,356. CUII's Phase II water revenue requirement from its most recent rate case totals \$4,020,089. When the total DSIC revenues are divided by the total base water revenue requirement, the resulting percentage is 1.08%, which is below the 10% cap. The evidence reflects that the total revenues that will be provided by CUII's DSIC surcharge, as modified by the Settlement Agreement, do not exceed the 10% cap imposed by the DSIC Statute.

E. Reconciliation of the DSIC Surcharge. Ind. Code § 8-1-31-14 establishes that at the end of each 12-month period following a DSIC order, the eligible utility shall reconcile the difference between adjustment revenues and infrastructure improvement costs during that period and recover or refund the difference, as appropriate, through additional adjustments. CUII shall reconcile the DSIC approved by this Order in the manner prescribed by Ind. Code § 8-1-31-14 and 170 IAC 6-1.1-8.

¹ CUII's original filing used a volumetric charge based on the requirement in 170 IAC 6-1.1-5(7) that a utility file a new tariff reflecting the requested DSIC in the same format as the existing tariff on file. CUII's revised case-in-chief recalculated the DSIC to be on a per-meter basis.

F. Other Settlement Terms. The remaining terms of the settlement include the investigation of the five service line replacements identified by OUCC witness Mr. Parks and the provision to update the watermain inventory in Commission Annual Reports. The Settlement Agreement also provides a framework for future DSIC filings that will assist the OUCC in conducting its review of infrastructure improvement charge requests made by Petitioner within the required deadlines. We find the Settling Parties' agreement with regards to these terms is supported by the record, in the public interest, and is approved.

11. Ultimate Finding. For the reasons set forth herein, and based on the evidence presented, the Commission finds that CUII's request for a DSIC as modified in the Settlement Agreement complies with the requirements of Ind. Code ch. 8-1-31 and 170 IAC 6-1.1. Accordingly, we find that CUII is authorized to collect from each of its present and future water customers a monthly DSIC of \$0.67 per equivalent 5/8" meter as set forth in Petitioner's Attachment AWD-3R.

12. Use of Settlement Agreement. The Settling Parties agree 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, regarding 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 (IURC March 19, 1997).

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

1. The Settlement Agreement between CUII and the OUCC is approved.
2. A Distribution System Improvement Charge calculated as a fixed charge by meter size and designed to generate total annual DSIC revenues of \$43,356 (\$0.67 for 5/8" meter) is approved.
3. CUII shall provide up-to-date watermain inventory in its Annual Reports to the Commission.
4. CUII shall investigate the five service line replacements identified in the OUCC's testimony no later than CUII's next rate case.
5. Prior to placing into effect the above-authorized DSIC, Petitioner shall file under this Cause an appendix to its schedule of rates and charges for water service for approval by the Commission's Water and Wastewater Division.
6. The above-authorized DSIC shall be subject to reconciliation as described in Finding No. 10(E) above.
7. This Order shall be effective on and after the date of its approval.

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

APPROVED: APR 24 2024

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

**Dana Kosco
Secretary of the Commission**

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF COMMUNITY UTILITIES OF)
INDIANA, INC. FOR APPROVAL OF (A) A)
NEW DISTRIBUTION SYSTEM)
IMPROVEMENT CHARGE ("DSIC"))
PURSUANT TO IND. CODE CHAP. 8-1-31; (B) A)
NEW RATE SCHEDULE REFLECTING THE)
DSIC; AND (C) INCLUSION OF THE COST OF)
ELIGIBLE DISTRIBUTION SYSTEM)
IMPROVEMENTS IN ITS DSIC)

CAUSE NO. 45998 DSIC 1

SETTLING
IURC ~~REPORTER~~
~~REPORTER~~ PARTIES'
EXHIBIT NO. 1
3-2024 AT
DATE REPORTER

STIPULATION AND SETTLEMENT AGREEMENT

Community Utilities of Indiana Inc. ("CUII") and the Office of Utility Consumer Counselor ("OUCC"), (collectively the "Settling Parties"), solely for purposes of compromise and settlement, stipulate and agree that the terms and conditions set forth below represent a fair, just and reasonable resolution of the matters set forth below, subject to their incorporation by the Indiana Utility Regulatory Commission ("IURC" or "Commission") into a final, non-appealable order ("Final Order") without modification or further condition that may be unacceptable to any Settling Party. If the Commission does not approve this Stipulation and Settlement Agreement ("Settlement Agreement"), in its entirety, the entire Settlement Agreement shall be null and void and deemed withdrawn, unless otherwise agreed to in writing by the Settling Parties.

I. TERMS AND CONDITIONS.

1. CUII accepts OUCC witness Compton's removal of \$50,684 in incidental main break investments and associated retirements (\$959).
2. CUII accepts OUCC witness Compton's removal of \$4,602 in incidental investments in net general ledger additions to service lines – no retirements removed because there were no retirements associated with this work.

3. CUII accepts OUCC's proposed limit of 10% of meter replacement costs in this DSIC. OUCC agrees that for purposes of this DSIC that cost is to be \$161,168. (It is agreed this 10% applies to the first 12-month period following 12-months of Phase II rates.) In entering into this stipulation, the OUCC is not waiving its ability to raise any position as to cost with respect to subsequent DSICs or whether the entire \$161,168 should be placed in rate base in CUII's next rate case.

4. CUII accepts OUCC witness Compton's averaging of 10% of the past 10% meter retirements, at (\$38,169).

5. The Settling Parties agree that the resulting monthly DSIC factor is \$0.67 per 5/8" meter (as opposed to \$1.47 in CUII's case-in-chief and the OUCC's testimonial position of \$0.61).

6. CUII accepts OUCC witness Parks' recommendation to provide up-to-date water main inventory in its IURC annual reports.

7. CUII agrees to discuss the format for future DSIC filings with OUCC prior to filing or, in the alternative, follow the framework set forth in OUCC witness Parks' testimony.

8. CUII accepts OUCC witness Parks' recommendation to investigate the five service line replacements discussed in his testimony no later than CUII's next rate case.

9. OUCC agrees to strike the portion of the pre-filed testimony of OUCC witness Willoughby beginning on Page 6, heading "III. Other Concerns" through Page 8, line 3.

II. PRESENTATION OF THE SETTLEMENT AGREEMENT TO THE COMMISSION.

1. The Settling Parties shall support this Settlement Agreement before the Commission and request that the Commission expeditiously accept and approve the Settlement Agreement.

2. Except as set forth in this Settlement Agreement, the Settling Parties agree each Settling Party shall offer its respective prefiled testimonies as evidence of and in support of the Settlement Agreement and each Settling Party waives any objection and cross-examination of each other's witnesses. The Settling Parties agree the Settlement Agreement is sufficiently supported by evidence submitted by each Settling Party's case-in-chief but that each Settling Party may submit testimony in support of Settlement. The Settling Parties agree that such settlement testimony shall be shared before filing to promote a lack of objection and waiver of cross-examination. The Settling Parties propose to submit this Settlement Agreement and evidence conditionally, and that, if the Commission fails to approve this Settlement Agreement in its entirety without any change or approves it with condition(s) unacceptable to any Settling Party, the Settlement and supporting evidence shall be withdrawn and the Commission will continue to hear this with the proceedings resuming at the point they were suspended by the filing of this Settlement Agreement.

3. A Commission Order approving this Settlement Agreement shall be effective immediately, and the agreements contained herein shall be unconditional, effective and binding on the Settling Parties as an Order of the Commission.

III. EFFECT AND USE OF SETTLEMENT AGREEMENT.

1. It is understood that this Settlement Agreement is reflective of a negotiated settlement and neither the making of this Settlement Agreement nor any of its provisions shall constitute an admission by either Settling Party in this or any other litigation or proceeding except to the extent necessary to implement and enforce its terms. It is also understood that each and

every term of this Settlement Agreement is in consideration and support of each and every other term.

2. Neither the making of this Settlement Agreement (nor the execution of any of the other documents or pleadings required to effectuate the provisions of this Settlement Agreement), nor the provisions thereof, nor the entry by the Commission of a Final Order approving this Settlement Agreement, shall establish any principles or legal precedent applicable to Commission proceedings other than those resolved herein.

3. This Settlement Agreement shall not constitute and shall not be used as precedent by any person or entity in any other proceeding or for any other purpose, except to the extent necessary to implement or enforce this Settlement Agreement.

4. 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 Settling Party may take with respect to any or all of the items resolved here and in any future regulatory or other proceedings.

5. The Settling Parties submit that evidence in support of this Settlement Agreement constitutes substantial evidence sufficient to support this Settlement Agreement and provides an adequate evidentiary basis upon which the Commission can make any findings of fact and conclusions of law necessary for the approval of this Settlement Agreement, as filed.

6. The communications and discussions during the negotiations and conferences and any materials produced and exchanged concerning this Settlement Agreement all relate to offers of settlement and shall be confidential, without prejudice to the position of either Settling Party, and are not to be used in any manner in connection with any other proceeding or otherwise.

7. The undersigned Settling Parties have represented and agreed that they are fully authorized to execute the Settlement Agreement on behalf of their respective clients, and their successor and assigns, which will be bound thereby.

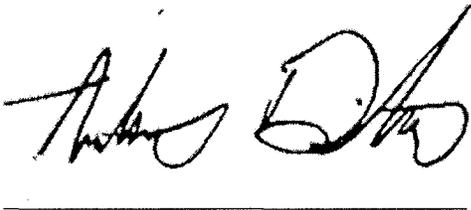
8. The Settling Parties shall not appeal or seek rehearing, reconsideration or a stay of the Commission Order approving this Settlement Agreement in its entirety and without change or condition(s) acceptable to any Settling Party (or related orders to the extent such orders are specifically implementing the provisions of this Settlement Agreement).

9. The provisions of this Settlement Agreement shall be enforceable by any Settling Party to this agreement first before the Commission by filing a formally docketed case before the full Commission, and thereafter a complaint may be filed in any state court of competent jurisdiction as necessary.

10. This Settlement Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

ACCEPTED and AGREED as of the 14th day of February, 2024.

Community Utilities of Indiana Inc.



**INDIANA OFFICE OF UTILITY CONSUMER
COUNSELOR**



By: _____

Daniel M. Le Vay, Deputy Consumer Counselor

Dated: February 14th, 2024