

OFFICIAL
EXHIBITS

FILED
September 8, 2020
INDIANA UTILITY
REGULATORY COMMISSION

**HOWARD COUNTY UTILITIES, INC. and
GREEN ACRES SUBDIVISION SEWER SYSTEM, INC.**

IURC CAUSE NO. 45360

Joint IURC
PETITIONER'S
EXHIBIT NO. 5
9-18-20
DATE REPORTER

SETTLEMENT TESTIMONY

OF

STEVEN K. BROCK

**Howard County Utilities, Inc. and
Green Acres Subdivision Sewer System, Inc.**

Cause No. 45360

Settlement Testimony of Steven K. Brock

1 **Q. Please state your name.**

2 A. My name is Steven K. Brock.

3 **Q. Are you the same Steven K. Brock who has testified on direct in this case?**

4 A. Yes, I am.

5 **Q. What is the purpose of your settlement testimony in this Cause?**

6 A. My testimony supports and sponsors the settlement agreement (“Settlement
7 Agreement”) reached among Howard County Utilities, Inc. (“HCU”), Green Acres
8 Subdivision Sewer System, Inc. (“Green Acres”) (together the “Joint Petitioners”)
9 and the Office of Utility Consumer Counselor (“OUCC”) (collectively the “Settling
10 Parties” and each a “Settling Party”) in this Cause to resolve all issues in this
11 proceeding. A copy of the Settlement Agreement is being filed simultaneously
12 herewith. I will respond to the recommendations made by Indiana Office of Utility
13 Consumer Counselor (“OUCC”) witnesses Richard J. Corey, Shawn Dellinger and
14 James T. Parks and explain the Settling Parties’ compromise on these issues as
15 reflected in the Settlement Agreement.

1 **Q. On whose behalf are you testifying?**

2 A. I am testifying on behalf of HCU and Green Acres. I am authorized to inform the
3 Commission for purposes of this proceeding that HCU and Green Acres believe:
4 (a) the Settlement Agreement as a whole presents a fair and reasonable resolution
5 of all issues in this proceeding; and (b) approval of the Settlement Agreement is in
6 the public interest. HCU and Green Acres encourage the Commission, after
7 considering the evidence filed in support of the settlement, to find the Settlement
8 Agreement to be reasonable and in the public interest and enter an order approving
9 the Settlement Agreement. I understand the OUCC likewise believes the Settlement
10 Agreement is a reasonable resolution of all issues and that approval of the
11 Settlement Agreement is in the public interest.

12 **Q. Was the Settlement Agreement the result of an arm's-length transaction**
13 **among the parties?**

14 A. Yes. The Settlement Agreement represents the result of arm's-length negotiations
15 by a diverse group of stakeholders with differing views on the issues raised in this
16 proceeding. The Settling Parties and legal counsel were involved in the
17 development of both the conceptual framework and the terms of the Settlement
18 Agreement. The Settling Parties devoted significant time to discussions,
19 collaborative exchange of information and settlement negotiations.

20 **Q. Please discuss how the Settlement Agreement is structured.**

21 A. Paragraph 2 sets forth the Settling Parties' agreement with respect to the revenue
22 requirement and related issues in this Cause, and Paragraph 3 sets forth the Settling
23 Parties' agreement with respect to the non-revenue requirement issues. Paragraph

1 4 sets forth the Settling Parties' agreement with respect to the rates and charges
2 Green Acres shall be permitted to charge its customers upon Closing on the
3 acquisition. I will discuss the key terms and conditions included in the Settlement
4 Agreement and explain how the parties arrived at the compromise reflected in the
5 Settlement terms and conditions.

6 **Q. Please summarize the recommendations made by OUCC witness Shawn**
7 **Dellinger.**

8 A. Mr. Dellinger made three (3) recommendations at the conclusion of his testimony
9 (Public's exhibit No. 2, pages 10 and 11). These, essentially, were:

- 10 1. The Commission approve the requested financing authority and the proposed
11 transaction;
- 12 2. The Commission disallow GASSS's requested debt service reserve requirement;
13 and
- 14 3. That the Petitioner's rates should be trued-up to reflect the actual cost of the debt.
15 That the Petitioner file a report within thirty (30) days of closing the loan,
16 explaining the terms of the new loan and providing an itemized account of all
17 issuance costs. The report should include a revised tariff, amortization schedule
18 and calculate the rate impact of the true-up. Additionally, the OUCC should have
19 fourteen (14) days to challenge Petitioner's true-up and the Petitioner should have
20 an additional fourteen (14) days to respond to any challenge the OUCC makes to
21 the true-up. The only exception to the rates being trued-up would occur if both

1 parties agree in writing that the increase or decrease in rates produced by the true-
2 up would be immaterial and therefore need not be implemented.

3 **Q. What is the Settling Parties' position on these three recommendations?**

4 A. As reflected in the Settlement Agreement, in Paragraphs 2d(h) and 2e, Joint
5 Petitioners agree with all three of Mr. Dellinger's recommendations. First Farmers
6 Bank & Trust is not requiring a debt service reserve as a condition of the lending,
7 and therefore Joint Petitioners agree for purposes of settlement that its request for
8 a debt service reserve requirement need not be granted. Joint Petitioners also agree
9 with the true-up report and process as set forth in Mr. Dellinger's testimony.

10 **Q. Please summarize the recommendations made by OUCC witness James T.**
11 **Parks.**

12 A. Mr. Parks made thirteen (13) recommendations at the conclusion of his testimony
13 (Public's exhibit No. 3, pages 17, 18 and 19). For purposes of Settlement, Joint
14 Petitioners agree with the majority of these recommendations, with some minor
15 clarifications as reflected in the Settlement Agreement. The only recommendations
16 with which Joint Petitioners did not outright agree were the second part of
17 recommendation number 3—requiring Green Acres to place the annual revenue
18 requirement for E&R in a restricted account, and recommendation 6—requiring
19 HCU to create Record Drawings for the 2011 improvements. The Settling Parties'
20 compromise on these issues is reflected in the Settlement Agreement.

1 **Q. Please elaborate on which part of Mr. Parks' recommendation number three**
2 **you agree with and which part you disagree with and state your reasons for**
3 **your opinion.**

4 A. Mr. Parks' recommendation number three states: " I recommend the Commission
5 approve Green Acres' request to include \$54,700 as an annual revenue requirement
6 for extensions and replacements and that this money should be placed in a restricted
7 account for use only on capital improvement projects of the wastewater utility."

8 I agree with Mr. Parks' recommendation for the \$54,700 as an annual revenue
9 requirement for extensions and replacements. However, I disagree with Mr. Parks'
10 recommendation that the \$54,700 be placed in a restricted account for use only on
11 capital improvement projects of the wastewater utility. My objection is to the
12 undefined nature of "capital improvement projects of the wastewater utility". Mr.
13 Parks is recommending many items for Petitioner to budget for (recommendation
14 4), investigate (recommendation 5), develop (recommendation 9 and 10), and
15 obtain and record (recommendation 12). These items have no specific operating
16 expense item funding. These recommendations would need to be funded from the
17 extensions and replacements revenue requirement because there is no other source
18 of funding for them. Additionally, it is impossible to predict the capital needs for
19 operating this utility in the future.

20 **Q. What compromise have the Settling Parties reached for purposes of**
21 **Settlement?**

1 A. As reflected in Paragraphs 2a and 2b of the Settlement Agreement, the Settling
2 Parties have agreed to an E&R revenue requirement amount of \$44,700 to be placed
3 in a restricted account and used only on capital improvement projects of the
4 wastewater utility of the type outlined in Paragraph 2a. Further, the Settling Parties
5 have agreed to an O&M revenue requirement of \$10,000 to be expended only for:
6 (i) periodic maintenance; (ii) for IURC required maintenance or repair items that
7 no specific revenue requirement amount has been allocated for in this Settlement
8 or the Final Order in this Cause; and (iii) for any required maintenance or repair
9 action to comply with an Indiana Department of Environmental Management
10 ("IDEM") mandate. As reflected in Paragraph 3d, for those recommendations made
11 by Mr. Parks where a specific revenue requirement amount was not allocated,
12 including, budgeting for emergency repairs, investigating effluent flow, and
13 developing a painting program, Green Acres shall be permitted to use funds in the
14 E&R Restricted Account or the \$10,000 allocated for Unspecific Maintenance and
15 Repairs for these purposes. For purposes of Settlement, the Settling Parties also
16 agreed that any portion of the \$10,000 allocated for Miscellaneous Unspecified
17 Maintenance and Repairs as set forth in Paragraph 2b but not used for those
18 purposes, may also be used for any E&R expense set forth in Paragraph 2a. Further,
19 any unexpended amount for Miscellaneous Unspecified Maintenance and Repairs
20 shall be placed in the E&R restricted account at the end of each fiscal year. The
21 Settling Parties also agreed that Green Acres shall provide information to the
22 Commission and the OUCC in its annual reports filed with the Commission
23 describing the capital improvements funded through the E&R Restricted Account

1 and any expenditure funded through the \$10,000 amount allocated for
2 miscellaneous unspecified maintenance and repairs. The \$10,000 described above
3 is in addition to a \$3,000 revenue requirement for sludge removal.

4 **Q. What agreement have the Settling Parties reached for purposes of Mr. Parks'**
5 **recommendations with respect to HCU's records?**

6 A. Mr. Parks made a number of recommendations with respect to the records HCU
7 should be required to turn over to Green Acres upon Closing. Prior to entering into
8 the Settlement Agreement, HCU provided the OUCC with a list of records it intends
9 to turn over to Green Acres upon closing, as well as copies of those records. As part
10 of his recommendations, Mr. Parks recommended HCU be required to create
11 Record Drawings for the 2011 improvements it made to its system for submittal to
12 Green Acres. During settlement negotiations, HCU notified the OUCC it did not
13 have "Record Drawings" prepared for the 2011 improvements, but that it had other
14 marked-up plans and drawings for the improvements which it could provide to
15 Green Acres for this purpose. As set forth in Paragraph 3 of the Settlement
16 Agreement, the OUCC agreed to accept the marked-up plans and drawings in lieu
17 of the Record Drawings, provided the owner of HCU agreed to determine and
18 physically mark (with spray paint) the location of all underground electric lines and
19 piping that conveys air or wastewater starting from the lift station and continuing
20 to and throughout the wastewater treatment plant and identify them on the plans
21 prior to turning them over to Green Acres. HCU further agreed to photograph these

1 markings and to provide copies to Green Acres and the OUCC, as well as to legibly
2 mark on its plans and drawings the locations as constructed of all electric lines and
3 any piping. HCU also agreed to provide both Green Acres and the OUCC with a
4 copy of the marked-up plans and drawings.

5 **Q. Have the Settling Parties' reached agreement on Mr. Parks' other**
6 **recommendations?**

7 A. Yes. As I testified, Joint Petitioners accepted the majority of Mr. Parks'
8 recommendations outright. The Settling Parties' agreement with respect to his other
9 recommendations is reflected in Paragraph 3 of the Settlement Agreement.

10 **Q. Please summarize the recommendations made by OUCC witness Richard J.**
11 **Corey.**

12 A. Mr. Corey made two (2) recommendations at the conclusion of his testimony
13 (Public's exhibit No. 4, page 16). These recommendations, essentially, were: 1.
14 Recommend the Commission authorize a monthly rate of \$120.42 per customer;
15 and 2 recommend that the Commission approve \$313,135 in annual revenue
16 requirements. As reflected in Paragraph 4 of the Settlement Agreement, the
17 Settling Parties have agreed to an annual revenue requirement to produce annual
18 operating revenues of \$320,752. This equates to a monthly rate per customer of
19 \$123.35. I will briefly discuss the parties' compromise on the individual
20 components comprising the revenue requirement in the following paragraphs.

1 **Q. Please explain the Settling Parties' compromise with respect to the**
2 **recommendations made by Mr. Corey.**

3 A. As reflected in Paragraphs 2d(a) through (g), Joint Petitioners accepted the majority
4 of Mr. Corey's recommendations for purposes of Settlement. There is one
5 substantive difference between Mr. Corey's recommendations and the parties'
6 position on Settlement. This is the adjustment for annual contract legal expense in
7 the operating expense revenue requirement. The test year contract legal expense
8 was \$8,383. In my original testimony, I recommended an adjustment of \$15,617
9 for contract legal expense, increasing the annual contract legal expense revenue
10 requirement to \$24,000. Mr. Corey recommended no test year adjustment for legal
11 expenses, leaving the annual contract legal expense revenue requirement at \$8,383.
12 For purposes of Settlement, the parties agreed to contract legal expense of \$16,000
13 per year. This amount reflects a compromise between Joint Petitioners' original
14 proposal of \$24,000 and the OUCC's proposal of \$8,383. I would also like to
15 address the Settling Parties' agreement with respect to Indiana Utility Receipts Tax.
16 Joint Petitioners recommended an adjustment to Indiana Utility Receipts Tax
17 ("URT") of \$5,482 in the case-in-chief. Mr. Corey recommended that Joint
18 Petitioners' proposed adjustment be disallowed based on the view Green Acres as
19 a not-for-profit sewer utility is exempt under Indiana law from paying URT. For
20 purposes of Settlement, Joint Petitioners agreed with Mr. Corey's recommendation,
21 provided Green Acres shall be permitted to submit a tariff revision for purposes of

1 adding URT expense to the revenue requirement in the event it is determined at a
2 later date that Green Acres is not exempt from paying URT.

3 **Q. What other terms are included in the Settlement Agreement?**

4 A. Paragraph 5 of the Settlement Agreement addresses the effect and scope of the
5 settlement, the approval being sought for the agreement and applicable conditions
6 to the effect of the agreement. Specifically, Paragraph 5 makes clear that the
7 Settlement Agreement is the result of negotiations and compromise reached during
8 those negotiations, and that neither the making of the settlement agreement nor
9 any of its provisions shall constitute an admission or waiver by any Settling Party
10 in any proceeding other than this Cause, now or in the future, nor shall it be cited
11 as precedent. The Settlement Agreement is a compromise and will be null and void
12 unless approved in its entirety without modification or further condition that is
13 unacceptable to any Settling Party. The Settlement Agreement also includes
14 provisions concerning the substantial evidence in the record supporting the
15 approval of the Settlement Agreement, recognizes the confidentiality of settlement
16 communications and reflects other terms typically found in settlement agreements
17 before this Commission.

18 **Q. In your opinion, is Commission approval of the Settlement Agreement in the**
19 **public interest?**

20 A. Yes. The Settlement Agreement is supported by and within the scope of the
21 evidence presented by the Settling Parties. In particular, it represents the result of
22 extensive, good faith, arm's-length negotiations reflecting a fair and balanced

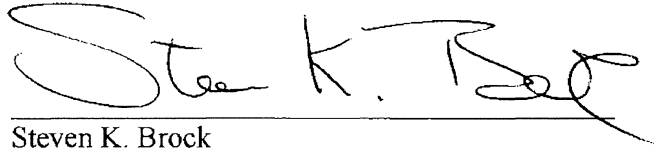
1 outcome of the issues in this Cause. Joint Petitioners' and the OUCC's testimonial
2 positions were modified through the negotiations as reflected in the Settlement. The
3 Settlement Agreement reasonably addresses the concerns raised in this proceeding
4 and allows Green Acres to acquire HCU, a "win/win" for all parties involved and
5 in the public interest. Joint Petitioners request the Commission to issue an order
6 approving the Settlement Agreement as described herein.

7 **Q. Does this conclude your settlement testimony in this cause?**

8 **A.** Yes, at this time.

VERIFICATION

I, Steven K. Brock, affirm under penalties of perjury that the foregoing representations are true and correct to the best of my knowledge, information and belief.


Steven K. Brock

Date: 9-8-2020