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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE)
PETITION OF WILDWOOD) CAUSE NO. 43699 U
SHORES UTILITIES CORP. FOR A)
NEW SCHEDULE OF RATES AND) APPROVED:
CHARGES)

MAY 19 2010

BY THE COMMISSION:

Loraine L. Seyfried, Administrative Law Judge

On May 29, 2009, Wildwood Shores Utilities Corp., d/b/a Aqua Indiana, Inc., ("Wildwood") filed with the Indiana Utility Regulatory Commission ("Commission") an application ("Application") requesting authority to increase certain of its recurring monthly rates and charges pursuant to the provisions of Indiana Code § 8-1-2-61.5 and 170 IAC 14-1. Wildwood also requested in the Application that the Commission approve the terms of a Wastewater Operations and Management Agreement, dated March 26, 2009 ("District Contract"), that Wildwood entered into with the Morgan County Regional Sewer District ("District"). Wildwood subsequently filed on June 8, 2009, as required by 170 IAC 14-1-2(a), proofs of the notice it had published describing the filing of the Application. Wildwood's June 8, 2009 filing also contained the text of a letter it sent to its customers describing the relief requested in the Application. On June 18, 2009, the Commission staff issued a Memorandum stating that the Application was complete.

On July 24, 2009, the Indiana Office of Utility Consumer Counselor ("OUCC") requested that the Commission conduct a field hearing in this Cause. By docket entry dated August 19, 2009, the Presiding Officers granted the request and, pursuant to notice required by law, the Commission conducted a field hearing on September 14, 2009.

On October 7, 2009, the OUCC filed a report ("Report") with the Commission as required by 170 IAC 14-1-4. The Report discussed and made several recommendations to the Commission concerning the relief requested by Wildwood. The Report also included written comments received by the OUCC subsequent to the field hearing. Wildwood filed a response to the Report on October 23, 2009, as allowed by 170 IAC 14-1-4. On that same date, a *Joint Stipulation and Agreement* entered into by Wildwood and the OUCC also was filed with the Commission. The parties subsequently filed on December 11, 2009 a *Revised Joint Stipulation and Agreement* ("Settlement Agreement") in order to memorialize their agreement on all issues before the Commission in this proceeding and to correct errors in, and omissions from, the *Joint Stipulation and Agreement* previously filed with the Commission.

Pursuant to IC § 8-1-2-61.5, a formal public evidentiary hearing is not required in rate cases involving small utilities with fewer than 5,000 customers, unless a hearing is requested by at least ten (10) customers, a public or municipal corporation, or by the OUCC. The Commission did not receive a request for a public evidentiary hearing. However, the

Commission determined that Wildwood's request for approval of the District Contract is not the type of relief contemplated by the expedited procedures provided for in IC § 8-1-2-61.5 and scheduled this matter for an evidentiary hearing. In connection with that hearing, Wildwood filed on February 25, 2010, the Supplemental Testimony of Thomas M. Bruns. The OUCC filed no responsive testimony.

Pursuant to notice given as provided by law, proof of which was incorporated into the record by reference and placed in the official files of the Commission, a public hearing was held on March 24, 2010 at 9:30 a.m., in Room 224, National City Center, 101 West Washington Street, Indianapolis, Indiana. At the hearing, the Supplemental Testimony of Thomas M. Bruns, the OUCC's Report and the Settlement Agreement were received and admitted into evidence without any objection. No members of the public appeared or sought to participate.

Based upon the applicable law and the evidence presented herein, the Commission now finds as follows:

1. Statutory Notice and Commission Jurisdiction. The information presented by Wildwood establishes that legal notice of the filing of the Application was published in accordance with law and that Wildwood gave proper notice of the nature and extent of the relief it is seeking. Therefore, due legal and timely notice of the matters in this proceeding was given and published as required by law. Wildwood is an investor-owned Indiana public utility, as defined by IC § 8-1-2-1. Wildwood primarily provides rural sewer service to fewer than 5,000 retail customers and provides services to the Morgan County Regional Sewer District for ninety (90) customers within the Wiser Addition. Accordingly, Wildwood has authority to seek an increase in its rates and charges for service pursuant to IC § 8-1-2-61.5 and 170 IAC 14-1. Therefore, the Commission has jurisdiction over the parties and subject matter of this case.

2. Wildwood's Characteristics. Wildwood was formed in 1977, is an Indiana corporation and, since 2003, is a subsidiary of Aqua America, Inc., which is headquartered in Bryn Mawr, Pennsylvania ("Aqua America"). Wildwood holds a Certificate of Territorial Authority to provide sewage disposal service in Madison, Greene and Harrison Townships of Morgan County, Indiana. While Wildwood has not yet initiated service within Greene and Harrison Townships, it presently provides sewage disposal service to 86 retail customers within Madison Township. Pursuant to its March 26, 2009 District Contract, Wildwood also provides wholesale treatment and other services to the District in connection with the collection system the District installed and owns within a portion of Morgan County's Madison Township known as the "Wiser Addition."

Wildwood is managed and operated by Aqua Indiana, Inc. ("Aqua Indiana"), which also is an Indiana corporation and subsidiary of Aqua America, Inc. In addition to Wildwood, Aqua Indiana manages and operates several other Aqua America-affiliated water and wastewater systems in Indiana. Aqua Indiana also provides contract operation and management of water and wastewater systems for both municipal and private sector clients in Indiana. Aqua Indiana has regional offices in Indianapolis and Fort Wayne.

Wildwood's collection system currently consists of approximately 3 miles of gravity

sewers. Wildwood's recently-expanded treatment plant has a capacity of 91,000 gallons per day, with ultraviolet disinfection of the treatment stream. Operation and maintenance of Wildwood's facilities are the responsibility of operators certified by the Indiana Department of Environmental Management ("IDEM") and other Aqua Indiana personnel based at offices in Danville, Indiana and elsewhere. The administrative functions necessary for Wildwood's operations, including customer service, billing, accounting, planning and purchasing, are handled in conjunction with other Aqua America business units.

3. Evidence and Positions on Relief Requested.

A. Proposed Rate Increase. Wildwood proposed in the Application to increase each of its recurring monthly rates and charges collected from its retail customers by approximately 93% in order to increase its annual operating revenues by \$89,993. No change in Wildwood's current nonrecurring fees and charges was proposed in the Application.

According to Wildwood, the proposed increases in its recurring monthly rates and charges, when added to its present sources of revenue, will not produce an operating income sufficient to cover its anticipated costs and allow it an opportunity to earn a fair return on its fair value rate base. Wildwood asserted that increases in its recurring monthly rates and charges collected from its retail customers of approximately 145% would be necessary to achieve that end. Wildwood stated, however, that such increases in the recurring monthly rates and charges it collects from its retail customers would represent a significant burden for some of those customers at this time. Wildwood stated that the proposed increase of only approximately 93% still provided it an opportunity to realize an acceptable level of operating income and would not impede its ability to obtain reasonable additional capital necessary to enable it to render adequate, reliable and safe sewage disposal service.

The Application contained schedules describing and supporting the increases Wildwood asserted could be justified (*i.e.*, 145%), as well alternative versions of some of those schedules showing the effect of Wildwood's proposal to cap the increases in the monthly recurring rates it collects from its retail customers at approximately 93%. As reflected on the alternative schedules, Wildwood is willing to accept as a consequence of capping the increase in those monthly recurring rates and charges to approximately 93% (and for purposes of this proceeding only) an effective rate of return on rate base of 5.69%, instead of the 8.375% that Wildwood asserts would otherwise be appropriate.

The accounting schedules that are part of the Report reflect the OUCC's disagreement with the derivation of the rate increases that Wildwood maintained in the Application could be justified (*i.e.*, 145%). Nevertheless, the schedules show that increases to Wildwood's recurring monthly rates and charges of approximately 118.91% are indicated. Accordingly, the OUCC recommended in its Report that the Commission approve the requested increases to Wildwood's recurring monthly rates and charges of approximately 93%.

Wildwood responded to the Report and indicated that, for purposes of settling the issues before the Commission in this proceeding, it could agree with the financial presentation contained in the accounting schedules included in the Report. According to Wildwood's

response, the Settlement Agreement entered into by Wildwood and the OUCC, which incorporates the Report's accounting schedules, reflects a reasonable resolution of all issues before the Commission in this Cause.

B. District Contract. Wildwood stated in the Application that the District Contract is the outgrowth of its efforts to assist Morgan County in addressing wastewater disposal problems, particularly within the Wiser Addition. That subdivision, currently comprised of ninety (90) homes, has experienced septic failures in recent years.

Under the District Contract, Wildwood treats the wastewater generated by the District's customers within the Wiser Addition and provides certain maintenance and customer service functions for the District. In return for those services, Wildwood receives from the District a monthly fee of \$2,700, which fee is subject to increase as new lots beyond the ninety (90) currently existing are able to access the District's system. In addition, in the event wastewater average daily flow for any month exceeds 27,900 gallons, Wildwood will receive additional compensation of \$4 for each 1,000 gallons of excess flow. The monthly fee is also subject to adjustment at the end of each 5-year term of the agreement.

Wildwood has taken into consideration in determining its annual revenue requirements the \$2,700 monthly fee (annually \$32,400) the District currently pays for services received from Wildwood. Wildwood has also factored in the wastewater flow from the Wiser Addition in projecting the treatment plant's usage.

The OUCC indicated in the Report that it had been concerned that Wildwood's customers could be subsidizing the District and analyzed this possibility. However, as reflected in the Report, the OUCC determined that because the proposed increases in Wildwood's recurring monthly rates and charges was limited to approximately 93%, any subsidization of the District by Wildwood's customers was effectively eliminated.

The Supplemental Testimony of Thomas M. Bruns presented at the March 24, 2010 public hearing provided additional information about the District Contract. According to Mr. Bruns, the District Contract was the result of arms-length negotiations between Wildwood and the District. He testified that Wildwood entered into the District Contract, in part, to assist the efforts of the Morgan County Commissioners in addressing the Wiser Addition's sewage disposal problems. Mr. Bruns explained that Wildwood is the only wastewater utility in the vicinity of the Wiser Addition that is in a position to provide the treatment services required to solve the Wiser Addition's problems.

Mr. Bruns testified that, in addition to contributing to the resolution of the Wiser Addition's sewage problems, the District Contract allowed Wildwood to expand its own operations. While the District Contract currently only makes Wildwood the operator of the District's system, Mr. Bruns pointed out the District Contract also provides for Wildwood's eventual purchase of the District's collection system in the Wiser Addition. Upon such a purchase, Wildwood's customer base will nearly double.

Mr. Bruns testified that the revenue Wildwood will receive from the District is sufficient to cover the costs Wildwood incurs to serve the District and will contribute to covering

Wildwood's fixed costs. The District's contribution to Wildwood's fixed costs, as pointed out by Mr. Bruns, would offset a portion of the revenue requirements that Wildwood otherwise would have had to reflect in the rates paid by its own customers. Mr. Bruns further testified that after Wildwood purchases the District's collection system it will be able to spread its fixed costs over a significantly larger customer base and allow the rates collected from its current customers to reflect economies of scale that do not currently exist. In fact, Mr. Bruns noted that Wildwood is presently able to add new customers to its system as a result of improvements made to its collection system in connection with the District's installation of the Wiser Addition's collection system. These new customers will pay Wildwood's applicable system development charge, as well as allow Wildwood to spread its costs over a larger customer base prior to its acquisition of the District's collection system.

Regarding the subsidization concern expressed in the OUCC's Report, Mr. Bruns testified that the differential between Wildwood's proposed rates and the lower rate charged by the District did not reflect any subsidization of the District's customers by Wildwood's customers. Mr. Bruns noted that the District set its rates independently of Wildwood's and maintained that the District's lower rate reflected the very favorable grant and loan financing the District obtained to build the collection system in the Wiser Addition. Mr. Bruns expressed confidence that, given the District's contribution to Wildwood's fixed costs and the limitation placed on the rate increase requested in this Cause, any risk that Wildwood's customers are subsidizing the District's customers is eliminated.

Mr. Bruns testified that he did not believe a cost of service study was needed based upon Wildwood's conclusion that no subsidy exists. Mr. Bruns also pointed out that performing a cost of service study would be costly and not justified given Wildwood's small customer base. Mr. Bruns concluded by stating when Wildwood is able to purchase the District's collection system all of Wildwood's customers will pay the same rates.

C. Settlement Agreement. The Settlement Agreement between the parties addresses the issues before the Commission as follows.

i. Test Year. The period used by both Wildwood and the OUCC for determining Wildwood's revenues and expenses incurred in providing sewer disposal service to its customers was the twelve months ended December 31, 2008. The parties request that we find that this twelve month period, with adjustments for changes that are fixed, known and measurable, are sufficiently representative of Wildwood's normal operations to provide reliable information for ratemaking purposes.

ii. Rate Base. Wildwood and the OUCC agree that Wildwood's utility properties used and useful for the provision of sewage disposal service to the public are properly valued for purposes of this proceeding as of July 31, 2009 and, as of that date, the original cost depreciated value of Wildwood's utility properties was \$1,086,710. The parties also agree that, for purposes of this proceeding, \$1,086,710 is the fair value of Wildwood's properties in service and used and useful for the convenience of the public as of July 31, 2009. After making provision for working capital of \$5,872, the parties agree that Wildwood's regulatory fair value rate base for purposes of this proceeding is \$1,092,582.

iii. **NOI at Present Rates.** The Settlement Agreement reflects that Wildwood's pro forma net operating income under its present rates and charges is no more than \$15,200. That amount of net operating income is less than the fair return identified above that could be justified and, as a result, the parties agreed that Wildwood is entitled to collect rates and charges that will provide it with an opportunity to earn a higher net operating income than its present rates and charges generate.

iv. **Potential Increase.** The OUCC's Report indicated that for purposes of this proceeding, Wildwood's current recurring monthly rates and charges could be increased so as to produce additional operating revenue of no less than \$121,414 and, together with other revenue, possibly produce total pro forma operating revenue of no less than \$223,714. Such an amount of additional operating revenue (*i.e.*, \$121,414) would represent a 118.91% increase over the amount produced under Wildwood's current recurring monthly rates and charges (*i.e.*, \$102,110) and reflects the effect of the increased revenue on federal and state income taxes, Indiana gross receipts tax and the Commission's fee.

v. **Allowed Increase.** Notwithstanding the potential increase the parties agreed could be authorized, the parties agreed the Commission should limit the increase in the current recurring monthly rates and charges as follows:

Type of Customer	Existing Rate	Proposed Rate	Increase
Residential & Commercial (per EDU)	\$41.44	\$80.00	\$38.56
School: During School Year (per school user based on average daily attendance)	\$0.95	\$1.83	\$0.88
School: When School is not in session	\$66.61	\$128.59	\$61.98

According to the parties, increasing each of the above-listed recurring monthly rates and charges by the indicated amounts will provide Wildwood with an opportunity to earn additional operating revenue of \$65,554. With such additional operating revenue from those recurring monthly rates and charges, Wildwood's revenue requirement under the Settlement Agreement is as follows:

Revenue Requirement

Rate Base	\$1,092,582
Effective Rate of Return	<u>4.8919%</u>
Resulting Net Operating Income	\$53,448
Less: NOI Under Present Rates	<u>\$15,200</u>
Additional NOI Required	\$38,248
Gross Revenue Conversion Factor	<u>1.7139</u>
Recommended Revenue Increase	\$65,554

While the parties agree an increase of \$65,554 in operating revenue from the rates and charges collected from retail customers is insufficient to cover anticipated costs and allow Wildwood an opportunity to earn a fair return, as indicated by either party's calculated cost of capital, the parties agree such an increase is fair and reasonable under the circumstances. When combined with the \$32,400 Wildwood earns annually under the terms of the District Contract and from other sources, the increase will provide Wildwood an opportunity to realize an acceptable level of operating income at this time and not impede its ability to obtain reasonable additional capital necessary to enable it to render adequate, reliable and safe sewage disposal service.

vi. Phase-in of Allowed Increase. In addition to limiting the magnitude of the increases, the parties proposed that Wildwood implement the allowed increases in recurring monthly rates and charges collected from its retail customers in two phases. The parties request that Wildwood be allowed to file a new schedule of rates and charges implementing the first phase of the allowed rate increase in the form set forth on Joint Settlement Exhibit 1 within thirty (30) days of the Commission's Order. Upon that schedule becoming effective, Wildwood would then cancel its current schedule of rates and charges. The parties further agree that Wildwood should be permitted to file a new schedule of rates and charges in the form set forth on Joint Settlement Exhibit 2, which would implement the second phase of the allowed rate increase, concurrently with the schedule implementing the first phase of the allowed rate increase. The parties agree, however, that under no circumstances would the new schedule of rates and charges for the second phase become effective prior to October 15, 2010. Under the terms of the Settlement Agreement, upon the rate schedule implementing the second phase of the allowed rate increase becoming effective, Wildwood would cancel its then-existing schedule of rates and charges, namely the schedules implementing the first phase of the allowed increase.

vii. District Contract. The parties agreed that the Commission should approve the District Contract for purposes of this Cause. The parties also agreed that the Commission should find that approval of the District Contract does not foreclose in future general rate cases consideration of whether the provisions of that contract grants the District an unreasonable or undue preference or advantage at the expense of Wildwood's other customers, or foreclose the granting of rate relief that keeps costs associated with such from being the responsibility of Wildwood's other customers.

viii. Additional Covenants. The Settlement Agreement contains the following additional provisions.

a. Rate Moratorium. The parties observed that the proposed increases in Wildwood's recurring monthly rates and charges of approximately 93% are significant. In order to assist customers by lessening the prospect of additional rate increases in the foreseeable future, Wildwood agreed that it would not file a rate case under IC § 8-1-2-61 or IC § 8-1-2-61.5 before June 1, 2012. However, Wildwood could file a rate case prior to that date (a) pursuant to IC § 8-1-2-113; (b) if needed to comply with requirements imposed by a court or environmental regulatory agency having jurisdiction over Wildwood or its facilities; or (c) with the prior written approval of the OUCC.

b. **Customer Growth Information.** The parties agreed that Wildwood should provide information concerning customer growth on its system required as part of its annual report filing with the Commission and, if requested by the Commission or OUCC in writing, provide such additional information as may be requested.

c. **Rate Case Expenses.** The parties assert that it may be necessary for Wildwood to file a new rate case shortly after the expiration of the moratorium described above and before it has recovered all of the agreed-upon rate case expenses of \$29,639, which they have agreed should be amortized and recovered over five (5) years. Consequently, in order to avoid adversely affecting Wildwood's financial position through a write-off of the unrecovered rate case expenses, the parties agreed that any portion of the rate case expense allowed in this case that has not been recovered at the time Wildwood files its next rate case should be added to and treated for all purposes as part of the rate case expense allowed in that next rate case.

d. **Effect of Settlement.** The Settlement Agreement states the parties agreed that the terms and conditions set forth in it represent a fair, reasonable and just resolution of all the issues in this Cause. The Settlement Agreement further provides that it shall not be construed nor be cited as precedent by any person or deemed an admission by any party in any other proceeding except as necessary to enforce its terms before the Commission, or before any court of competent jurisdiction on these particular issues.

D. **Evidence at Hearing.** Mr. Bruns reiterated that the District Contract arose from a desire to assist the efforts of the Morgan County Commissioners to solve sewage disposal problems in the Wiser Addition and was the result of an arms-length negotiation with the District. Mr. Bruns explained the District Contract's contribution to keeping Wildwood's proposed rates lower than they otherwise would have been, as well as the benefits that would result in the short and long term from the possible addition of new customers to the system.

Mr. Bruns again testified that the differential between Wildwood's proposed rates and the rates currently charged by the District reflected the favorable grant and loan financing received by the District to construct its collection system in the Wiser Addition. Mr. Bruns also stated that the District's rates did not have to reflect income and property taxes as Wildwood's did. He also explained how Wildwood's cost to serve its current customers differed from its cost to serve the District's customers within the Wiser Addition. According to Mr. Bruns, Wildwood has made no investment in the collection system serving customers within the Wiser Addition and did not have to make an allowance for bad debts in connection with those customers. Mr. Bruns testified that the District alone was responsible for bad debts, which appeared to be substantial, and pointed out that the District paid Wildwood for its services under the District Contract without regard for how successful the District was in attracting customers to its service and collecting the amounts owed by its customers for that service.

Mr. Bruns stated that Wildwood's possible service to the District in connection with the Wiser Addition was not a factor in its decision to expand its treatment plant. Mr. Bruns described the factors that went into the expansion decision in 2006. Mr. Bruns testified that Wildwood's then existing treatment plant had a capacity of only 31,000 MGD, could not safely

treat the flows coming to it and had failed an inspection conducted by IDEM. Mr. Bruns also testified that the new expanded treatment plant was sized to treat the wastewater flows generated by its current customers, deal with inflow and infiltration into its system and allow Wildwood to add customers in portions of its service area located outside of the Wiser Addition. According to Mr. Bruns, the possibility of treating wastewater flows from the Wiser Addition was not taken into consideration because, at the time, the Morgan County Commissioners were unable to secure funding for the needed collection system.

Mr. Bruns testified that Wildwood's treatment and other services for the Wiser Addition began in November, 2008 under an agreement with the Morgan County Commissioners. Upon creation of the District in early 2009, however, the District Contract was entered into and reflects the earlier agreement's terms and conditions. Mr. Bruns also testified that neither the District Contract nor the earlier agreement with the Commissioners had been presented to the Commission for approval. Mr. Bruns expressed his belief that it was considered more appropriate to present the District Contract for approval by the Commission as part of its application in this Cause.

4. Commission Discussion and Findings. Settlements presented to the Commission are not ordinary contracts between private parties. *U.S. 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, *U.S. Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coalition v. Pub. Service Co.*, 582 N.E.2d 330, 331 (Ind. 1991)). The Commission's own procedural rules also require that settlements be supported by probative evidence. 170 IAC 1-1.1-17(d).

The evidence of record reflects that Wildwood could justify an across-the-board increase in its recurring monthly rates and charges of approximately 145%. In recognition of the impact such increases would have on its customers, Wildwood has agreed to limit the increases in its recurring monthly rates and charges to approximately 93%. While disagreeing with Wildwood's evidence concerning the rate increases that could be justified, the accounting schedules contained in the OUCC's Report reflect that increases of approximately 118.91% are warranted, and the Report recommended that the Commission allow the requested increases of approximately 93%. As the parties have agreed, the revenue generated by such an increase, when combined with revenue from the District and other sources, will provide Wildwood an opportunity to realize an acceptable level of operating income at this time and not impede its ability to obtain reasonable additional capital necessary to enable it to render adequate, reliable and safe sewage disposal service.

Wildwood and the OUCC have also proposed in Settlement Agreement that (i) the allowed increases in Wildwood's recurring monthly rates and charges should be implemented in two phases; (ii) that Wildwood should observe a conditional moratorium on filing for additional

rate increases in the foreseeable future until after June 1, 2012; and (iii) in order to assist in monitoring the continued reasonableness of its rates and charges, Wildwood should comply with its obligations to provide accurate information concerning customer growth on its system as part of its annual report filing with the Commission and provide such additional information to this Commission or the OUCC upon request. These proposals, together with Wildwood's proposal to limit the magnitude of the increases in its recurring monthly rates and charges to approximately 93%, should further lessen the adverse affects of otherwise significant rate increases.

The parties also agreed that Wildwood should be allowed to recover a reasonable level of legal, accounting and other expenses over a 5-year period. The Settlement Agreement recites, however, that Wildwood may have to seek additional rate increases before that 5-year period expires. Accordingly, the parties have also agreed that, if any portion of the allowed rate case expense has not been recovered at the time Wildwood files its next rate case, the amount of the unrecovered expense amortization should be added to and treated as part of the rate case expense allowed in that next rate case. In this way, Wildwood can avoid having its financial position adversely affected in the future by a write-off of the unrecovered rate case expense.

Finally, there is the issue of the District Contract. We initially note that neither the District Contract nor Wildwood's earlier agreement with the Morgan County Commissioners were presented for approval by the Commission prior to Wildwood commencing to provide the services required by them. Such prior approval by the Commission is expressly required by IC § 8-1-2-24 and 25, and Wildwood's failure to fully satisfy these statutory requirements is troubling. Failure to seek approval prior to entering into such an agreement exposes ratepayers to potentially unreasonable and unlawful terms and charges, and places the Commission in the difficult position of having to disapprove of, or requiring the parties to remedy, any agreements ultimately found to be unreasonable or unlawful. Consequently, Wildwood is instructed to take such steps as are necessary to ensure that it seeks Commission approval prior to entering into such agreements in the future.

Notwithstanding the above, both Wildwood and the OUCC agreed that the Commission should approve the District Contract. However, they also agreed that such approval would not preclude a consideration in future proceedings of whether the contract creates an unreasonable or undue preference or advantage to any of Wildwood's customers. By virtue of the Commission's previous grant of authority to Wildwood, Wildwood has the capacity to treat wastewater and the managerial and technical expertise to perform the services set forth in the District Contract. In addition, based on the evidence presented, the revenue Wildwood will receive from the District under the District Contract reduces the revenue requirements that would be reflected in the rates and charges that Wildwood's other customers would have to pay. In addition, the evidence demonstrates that this revenue, along with Wildwood's acceptance of a 93% cap on the rate increase, is adequate to avoid any subsidization of the District by Wildwood's customers.

Based on the above, we find that the Settlement Agreement is reasonable, that its terms are in the public interest, and that it represents a just resolution of the matters at issue in this proceeding. With regard to future use, citation, or precedent of the Settlement Agreement, we find that our approval of the terms of the Settlement Agreement should be construed in a manner consistent with our finding in *In Re Richmond Power & Light*, Cause No. 40434 (Ind. Util.

Regulatory Comm'n, Mar. 19, 1997).

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

1. The Settlement Agreement, a copy of which is attached to this Order, is hereby accepted and approved as set forth herein.
2. Wildwood is hereby authorized to increase its recurring monthly rates and charges in the manner set forth above in order to have the opportunity to earn from those rates and charges additional operating revenues for its sewage disposal utility of \$65,554.
3. Wildwood shall phase-in the allowed increases in its recurring monthly rates and charges in the manner set forth herein.
4. Wildwood shall file with the Water/Wastewater Division of the Commission new schedules of rates and charges consistent with this Order, which schedules of rates and charges shall be effective on and after the date of approval and in accordance with their terms.
5. This Order shall be effective on and after the date of its approval.

ATTERHOLT, MAYS AND ZIEGNER CONCUR; HARDY AND LANDIS ABSENT:

APPROVED: **MAY 19 2010**

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



**Sandra K. Gearlds,
Acting Secretary to the Commission**

COPY

STATE OF INDIANA

FILED

DEC 11 2009

INDIANA UTILITY REGULATORY COMMISSION
INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF PETITION OF)
WILDWOOD SHORES UTILITIES CORP.) CAUSE NO. 43699-U
FOR RATE NEW SCHEDULE OF RATES)
AND CHARGES)

REVISED JOINT STIPULATION AND AGREEMENT

On May 29, 2009, Wildwood Shores Utilities Corp., d/b/a Aqua Indiana, Inc., ("Wildwood") filed an application requesting authority to increase certain recurring monthly rates and charges pursuant to the provisions of Indiana Code § 8-1-2-61.5 and 170 IAC 14-1 by approximately 93% (the "Application"). Wildwood also requested in the Application that the Commission approve the terms of its March 26, 2009 Wastewater Operations and Management Agreement with the Morgan County Regional Sewer District ("District"). Under that agreement, Wildwood provides treatment and other services for the District's wastewater collection system within the area of Morgan County known as the "Wiser Addition".

The Indiana Office of Utility Consumer Counselor ("OUCC") reviewed the Application, requested additional information from Wildwood, considered the comments presented at and subsequent to a field hearing conducted by the Commission and, as required by 170 IAC 14-1-4, filed on October 7, 2009 a report with the Commission addressing the relief requested by Wildwood (the "Report"). The Report contained the OUCC's recommendation that the Commission approve the requested increases in certain of Wildwood's recurring monthly rates and charges, which increases the OUCC suggested should be implemented in two steps to make the increase more gradual.

Following negotiations, Wildwood and the OUCC (collectively, the "Parties") entered into this Revised Joint Stipulation and Agreement (the "Settlement Agreement") in order to correct errors reflected in and omissions from the Joint Stipulation and Agreement previously filed with the Commission and memorialize their agreement on all of the issues before the Commission in this proceeding, including without limitation as follows:

1. **Compliance with Regulatory Requirements.** Wildwood is a public utility providing rural sewage disposal service to fewer than 5,000 retail customers and does not extensively serve another utility. Also, Wildwood is not a not-for-profit utility, conservancy district or municipal utility and, accordingly, the provisions of 170 IAC 14-1-2(a)(5) and (6) are not applicable to the Application. Wildwood is entitled to request an increase in its rates and charges for service pursuant to, and the Application satisfies all of the requirements of, Indiana Code § 8-1-2-61.5 and 170 IAC 14-1.

2. **Test Year and Agreed Schedules.** The period used by both Wildwood and the OUCC for determining Wildwood's revenues and expenses recently incurred in providing sewer disposal service to its customers was the twelve months ended December 31, 2008. With adjustments for changes that are fixed, known and measurable, this test year is sufficiently representative of Wildwood's normal operations to provide reliable information for ratemaking purposes. For purposes of this proceeding only and in order to further settlement, Wildwood accepts to the extent consistent with the provisions of this Settlement Agreement the OUCC's presentation of Wildwood's revenue requirement and its derivation shown in the schedules appearing as part of the Report.

3. **Rate Base.** Wildwood's utility properties used and useful for the provision of sewage disposal service to the public are properly valued for purposes of this proceeding only as of July 31, 2009 and, as of that date, the original cost depreciated value of Wildwood's utility properties was \$1,086,710. For purposes of this proceeding only, \$1,086,710 also is the fair value of Wildwood's properties in service and used and useful for the convenience of the public as of July 31, 2009. After making provision for working capital of \$5,872, Wildwood's regulatory fair value rate base for purposes of this proceeding is \$1,092,582.

4. **Allowed Increase.** The Commission should accept as fair and reasonable Wildwood's request to increase each of the below-listed recurring monthly rates and charges collected from retail customers as follows:

Type of Customer	Existing Rate	Proposed Rate	Increase
Residential & Commercial (per EDU)	\$41.44	\$80.00	\$38.56
School: During School Year (per school user based on average daily attendance)	\$0.95	\$1.83	\$0.88
School: When School is not in session	\$66.61	\$128.59	\$61.98

Increasing each of these recurring monthly rates and charges by the amounts indicated will provide Wildwood with an opportunity to earn additional operating revenue of \$65,554. While such additional operating revenue, when combined with the revenue Wildwood earns under the terms of its March 26, 2009 Wastewater Operations and Management Agreement with the District and from other sources, will be insufficient to cover anticipated costs and allow it an opportunity to earn the fair return on its fair value rate base shown above, the Commission should find that such an increase in operating

revenue, when combined with Wildwood's other revenue, will provide Wildwood an opportunity to realize an acceptable level of operating income at this time and not impede its ability to obtain reasonable additional capital necessary to enable it to render adequate, reliable and safe sewage disposal service.

5. **Phase-in of Allowed Increase.** Wildwood should implement the allowed increases in its recurring monthly rates and charges described in Paragraph 4 above in two phases. In order to implement the first phase, Wildwood shall file a new schedule of rates and charges in the form set forth on Joint Settlement Exhibit 1 within 30 days of the Commission's approval of a Final Order complying with Paragraph 9 below and, upon it becoming effective, cancel its currently existing schedule of rates and charges. In order to implement the second phase of the allowed increase, Wildwood should be permitted to file a new schedule of rates and charges in the form set forth on Joint Settlement Exhibit 2 concurrently with the schedule implementing the first phase of the allowed rate increase. Under no circumstances, however, shall the new schedule of rates and charges in the form set forth on Joint Settlement Exhibit 2 become effective prior to October 15, 2010. Upon the rate schedule implementing the second phase of the allowed rate increase becoming effective, Wildwood shall cancel its then existing schedule of rates and charges, i.e., the schedules implementing the first phase of the allowed increase. The Commission should find that the recurring monthly rates and charges shown in the schedule attached as Joint Settlement Exhibit 2 are sufficient to produce the results described in Paragraph 4 above and are otherwise fair, just, reasonable and non-discriminatory.

6. **District Agreement.** The Commission should find that the provisions of Wildwood's March 26, 2009 Waste Operations and Management Agreement with the District should be approved for purposes of this Cause. The Commission should also find, however, that approval in this Cause of Wildwood's March 26, 2009 Waste Operations and Management Agreement does not, and should not be construed to, foreclose in future general rate cases (i) consideration of whether the provisions of Wildwood's March 26, 2009 Waste Operations and Management Agreement grants the District an unreasonable or undue preference or advantage at the expense of Wildwood's other customers, and (ii) entry of rate relief that keeps costs associated with any such unreasonable or undue preference or advantage found to exist from being the responsibility of Wildwood's other customers.

7. **Additional Covenants.**

A. **Rate Moratorium.** The increase in annual operating revenues that the Parties have agreed should be allowed by the Commission is significant. In order to assist customers by lessening the prospect of rate increases in the foreseeable future, Wildwood shall not file a rate case under Ind. Code § 8-1-2-61 or Ind. Code § 8-1-2-61.5 before June 1, 2012; provided, however, Wildwood may file a rate case prior to that date (i) pursuant to Ind. Code § 8-1-2-113; (ii) if needed to comply with requirements imposed by a court or environmental regulatory agency having jurisdiction over Wildwood or its facilities; or (iii) with the prior written approval of the OUCC.

B. **Customer Growth Information.** Wildwood should provide all information concerning customer growth on its system required as part of its annual report filing with

the Commission and, if requested by the Commission or OUCC, provide such additional information concerning customer growth on its system as may be requested.

C. Rate Case Expenses. The parties have agreed Petitioner's rate case expense should be decreased to \$29,639, which sum includes legal fees, accounting fees, administrative costs and rate case expense not yet realized under the Commission's prior order. The Parties have agreed this expense should be amortized and recovered over five (5) years. Therefore, Wildwood may file a new rate case shortly after the expiration of the moratorium described in Section 10(A) above and before it has recovered all of the agreed-upon rate case expenses (i.e., \$29,639). Consequently, in order to avoid adversely affecting Wildwood's financial position through a write-off of the unrecovered rate case expenses or otherwise, any portion of the rate case expenses allowed in this case that have not been recovered at the time Wildwood files its next rate case (whether filed under Ind. Code § 8-1-2-61 or Ind. Code § 8-1-2-61.5) should be added to and treated for all purposes as part of the rate cases expense allowed in that next rate case.

8. Waiver of Hearing and Admission of Evidence. The Parties hereby waive any right they may have to request a public hearing in this proceeding. If an evidentiary hearing is held, the OUCC stipulates to the admission into evidence of the Application and waives any cross-examination of Wildwood's witnesses. Similarly, Wildwood stipulates to the admission into evidence of the Report and waives any cross-examination of the OUCC's witnesses at any evidentiary hearing in this proceeding. The Parties shall jointly sponsor this Settlement Agreement and Joint Settlement Exhibits 1 through 3 at any evidentiary hearing in this proceeding.

9. **Mutual Conditions on Settlement Agreement.** The Parties agree that the terms and conditions set forth in this Settlement Agreement are supported by the evidence and based on the Parties' independent review of the evidence, represent a fair, reasonable and just resolution of all the issues in this Cause, subject to their incorporation in a Final Order in the form attached as Joint Settlement Exhibit 3 without modification or further condition, which may be unacceptable to either party. If the Commission does not approve this Settlement Agreement in its entirety and incorporate it into a Final Order as provided above, it shall be null and void and deemed withdrawn, unless otherwise agreed to in writing by the Parties. The Parties represent that there are no other agreements in existence between them relating to the matters covered by this Settlement Agreement.

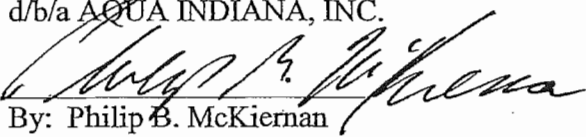
10. **Non-Precedential.** As a condition precedent to the Settlement Agreement, the Parties condition their agreement on the Commission providing assurance in the Final Order issued herein that it is not the Commission's intent to allow this Settlement Agreement or the Final Order approving it to be used as an admission or as a precedent against the signatories hereto except to the extent necessary to enforce the terms of the Settlement Agreement. The Parties agree that this Settlement Agreement shall not be construed nor be cited as precedent by any person or deemed an admission by any party in any other proceeding except as necessary to enforce its terms before the Commission, or before any court of competent jurisdiction on these particular issues. This Settlement Agreement is solely the result of negotiation in the settlement process and except as provided herein is without prejudice to and shall not constitute a waiver of any position that either of the Parties may take with respect to any or all of the items

resolved herein in any future regulatory or other proceedings and, failing approval by the Commission, shall not be admissible in any subsequent proceedings.

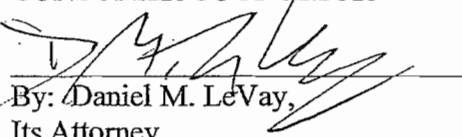
11. **Authority to Stipulate.** The undersigned have represented and agreed that they are fully authorized to execute this Settlement Agreement on behalf of their designated clients who will be bound thereby.

Respectfully submitted,

WILDWOOD SHORES UTILITIES CORP.,
d/b/a AQUA INDIANA, INC.


By: Philip B. McKiernan
Attorney for Wildwood Shores
Utilities Corp., d/b/a
Aqua Indiana, Inc.

INDIANA OFFICE OF UTILITY
CONSUMER COUNSELOR


By: Daniel M. LeVay,
Its Attorney

**Wildwood Shores Utilities Corporation
d/b/a
AQUA INDIANA, INC.
8275 Allison Pointe Trail, Suite 375
Indianapolis, IN 46250
317.577.1390**

SCHEDULE OF SEWER RATES AND CHARGES – PHASE I

RATES FOR SINGLE FAMILY RESIDENTIAL AND COMMERCIAL CUSTOMERS

Sanitary Sewage Disposal Service, Flat Rate	\$ 65.00 per month per equivalent dwelling unit
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RATE FOR SCHOOL CUSTOMERS

Unmetered Flat Monthly Rate, during school year	\$ 1.49 per school user, based on average daily attendance
Unmetered Flat Monthly Rate, when school is not in session	\$ 104.48 per month

NON-RECURRING RATES

Reconnection Charge	\$ 875
New Tap Inspection Fee	\$ 175

LATE PAYMENT PENALTY FEE

A sewage disposal bill shall be rendered as a net bill. If the net bill is not paid within twenty-one (21) days after the bill is mailed, it shall become a delinquent bill and a late payment charge may be added in the amount of ten percent (10%) of the first three dollars (\$3.00) and three percent (3%) of the excess of three dollars (\$3.00).

SYSTEM DEVELOPMENT CHARGE

System Development Charge	\$ 2,800 per equivalent dwelling unit
---------------------------	--

A system development charge will be billed for each new connection to the system. One-half of the charge is to be paid upon request for service and one-half to be paid upon connection of service.

Effective:

Wildwood Shores Utilities Corporation
d/b/a
AQUA INDIANA, INC.
8275 Allison Pointe Trail, Suite 375
Indianapolis, IN 46250
317.577.1390

SCHEDULE OF SEWER RATES AND CHARGES – PHASE II

RATES FOR SINGLE FAMILY RESIDENTIAL AND COMMERCIAL CUSTOMERS

Sanitary Sewage Disposal Service, Flat Rate	\$ 80.00 per month per equivalent dwelling unit
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RATE FOR SCHOOL CUSTOMERS

Unmetered Flat Monthly Rate, during school year	\$ 1.83 per school user, based on average daily attendance
Unmetered Flat Monthly Rate, when school is not in session	\$ 128.59 per month

NON-RECURRING RATES

Reconnection Charge	\$ 875
New Tap Inspection Fee	\$ 175

LATE PAYMENT PENALTY FEE

A sewage disposal bill shall be rendered as a net bill. If the net bill is not paid within twenty-one (21) days after the bill is mailed, it shall become a delinquent bill and a late payment charge may be added in the amount of ten percent (10%) of the first three dollars (\$3.00) and three percent (3%) of the excess of three dollars (\$3.00).

SYSTEM DEVELOPMENT CHARGE

System Development Charge	\$ 2,800 per equivalent dwelling unit
---------------------------	--

A system development charge will be billed for each new connection to the system. One-half of the charge is to be paid upon request for service and one-half to be paid upon connection of service.

Effective: October 15, 2010

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF PETITION OF	)	
WILDWOOD SHORES UTILITIES CORP.	)	CAUSE NO. 43699-U
FOR RATE NEW SCHEDULE OF RATES	)	
AND CHARGES	)	APPROVED: _____

BY THE COMMISSION

Jeffrey L. Golc, Commissioner

Lorraine Hitz-Bradley, Administrative Law Judge

On May 29, 2009, Wildwood Shores Utilities Corp., d/b/a Aqua Indiana, Inc., ("Wildwood") filed in this Cause an application requesting authority to increase certain of its recurring monthly rates and charges pursuant to the provisions of Indiana Code § 8-1-2-61.5 and 170 IAC 14-1 (the "Application"). Wildwood also requested in the Application that the Commission approve the terms of a Wastewater Operations and Management Agreement, dated March 26, 2009, that Wildwood has entered into with the Morgan County Regional Sewer District. Wildwood subsequently filed on June 8, 2009, as required by 170 IAC 14-1-2(a), proofs of the notice it had published describing the filing of the Application. Wildwood's June 8, 2009 filing also contained the text of a letter it sent to its customers describing the relief requested in the Application.

On July 24, 2009, the Indiana Office of Utility Consumer Counselor ("OUCC") requested that the Commission conduct a field hearing in this Cause. By a docket entry dated August 19, 2009, the Presiding Officers granted the request and, pursuant to notice required by law, the Commission conducted a field hearing in this Cause on September 14, 2009. Approximately 37 individuals attended the field hearing. Oral comments were provided by 9 individuals and the written comments of another 28 individuals were received into the record at the field hearing.

The record of the field hearing was left open until September 25, 2009 in order to allow the OUCC to submit into the record any additional written comments it may receive from the public.

On October 7, 2009, the OUCC filed a report with the Commission as required by 170 IAC 14-1-4 (the "Report"). The Report discussed and made several recommendations to the Commission concerning the relief requested by Wildwood. The Report also included written comments received by the OUCC subsequent to the field hearing. Wildwood filed a response to the Report on October 23, 2009, as allowed by 170 IAC 14-1-4. A Joint Stipulation and Agreement entered into by Wildwood and the OUCC also was filed with the Commission on October 23, 2009. However, the parties subsequently filed on December 11, 2009 a Revised Joint Stipulation and Agreement (the "Settlement Agreement") in order to correct errors reflected in and omissions from the Joint Stipulation and Agreement previously filed with the Commission and memorialize their agreement on all of the issues before the Commission in this proceeding.

Pursuant to Indiana Code § 8-1-2-61.5, a formal public evidentiary hearing is not required in rate cases involving small utilities with fewer than 5,000 customers, unless a hearing is requested by at least ten customers, a public or municipal corporation, or by the OUCC. The Commission did not receive a request for a public evidentiary hearing from any customers, a public or municipal corporation, or the OUCC and, as a result, no public evidentiary hearing was held in this Cause.

Based upon the applicable law and the evidence presented herein, the Commission now finds as follows:

1. **Statutory Notice and Commission Jurisdiction.** The information presented by Wildwood in this Cause establishes that legal notice of the filing of the Application was published in accordance with law and that Wildwood gave proper notice of the nature and extent

of the relief it is seeking. Therefore, due legal and timely notice of the matters in this proceeding was given and published as required by law. Further, as that same information and the Settlement Agreement show, Wildwood is an Indiana public utility, not a not-for-profit utility, conservancy district or municipal utility. Wildwood primarily provides rural sewer service to fewer than 5,000 retail customers and does not extensively serve another utility. Accordingly, the provisions of 170 IAC 14-1-2(a)(5) and (6) are not applicable to the Application and Wildwood is entitled to request an increase in its rates and charges for service pursuant to Indiana Code § 8-1-2-61.5 and 170 IAC 14-1.

The Application satisfies all of the requirements of Indiana Code § 8-1-2-61.5 and 170 IAC 14-1. The Commission, therefore, has jurisdiction over the parties and subject matter of this case.

2. **Wildwood's Characteristics.** Wildwood, formed in 1977, is an Indiana corporation and, since 2003, a subsidiary of Aqua America, Inc., which is headquartered in Bryn Mawr, Pennsylvania ("Aqua America"). Wildwood holds a Certificate of Territorial Authority to provide sewage disposal service in Madison, Greene and Harrison Townships of Morgan County, Indiana. While Wildwood has not yet initiated service within Greene and Harrison Townships, it presently provides sewage disposal service to 86 retail customers within Madison Township. Pursuant to its March 26, 2009 Wastewater Operations and Management Agreement with the District, Wildwood also provides wholesale treatment and other services to the District in connection with the collection system the District installed and owns within a portion of Morgan County's Madison Township known as the "Wiser Addition."

Wildwood is managed and operated by Aqua Indiana, Inc. ("Aqua Indiana"), which also is an Indiana corporation and subsidiary of Aqua America, Inc. In addition to Wildwood, Aqua

Indiana manages and operates several other Aqua America-affiliated water and wastewater systems in Indiana. Aqua Indiana also provides contract operation and management of water and wastewater systems for both municipal and private sector clients in Indiana. Aqua Indiana has regional offices in Indianapolis and Fort Wayne.

Wildwood's collection system currently consists of approximately 3 miles of gravity sewers. Wildwood's recently-expanded treatment plant has a capacity of 91,000 gallons per day, with ultraviolet disinfection of the treatment stream. Operation and maintenance of Wildwood's facilities are the responsibility of operators certified by the Indiana Department of Environmental Management and other Aqua Indiana personnel based at offices in Danville, Indiana and elsewhere. The administrative functions necessary for Wildwood's operations, including customer service, billing, accounting, planning and purchasing, are handled in conjunction with other Aqua America business units.

3. **Evidence and Positions on Relief Requested.**

A. **Proposed Rate Increase.** Wildwood proposed in the Application to increase each of its recurring monthly rates and charges collected from its retail customers by approximately 93% in order to increase its annual operating revenues by \$89,993. No change in Wildwood's current nonrecurring fees and charges was proposed in the Application.

According to Wildwood, the proposed increases in its recurring monthly rates and charges, when added to its present sources of revenue, will not produce for it an operating income sufficient to cover its anticipated costs and allow it an opportunity to earn a fair return on its fair value rate base. Wildwood asserted that increases in its recurring monthly rates and charges collected from its retail customers of approximately 145% would be necessary to achieve that end. Wildwood stated, however, that such increases in the recurring monthly rates

and charges it collects from its retail customers would represent a significant burden for some of those customers at this time. Wildwood asserted that the proposed increases of only approximately 93% still provided it an opportunity to realize an acceptable level of operating income and not impede its ability to obtain reasonable additional capital necessary to enable it to render adequate, reliable and safe sewage disposal service.

The Application contained detailed schedules describing and supporting the increases Wildwood asserted could be justified (i.e., 145%), as well alternative versions of some of those schedules showing the effect of Wildwood's proposal to cap the increases in the monthly recurring rates it collects from its retail customers at approximately 93%. As shown on the alternative schedules, Wildwood is willing to accept as a consequence of capping the increase in those monthly recurring rates and charges to approximately 93% (and for purposes of this proceeding only) an effective rate of return on rate base of 5.69%, instead of the 8.375% that Wildwood asserts would otherwise be appropriate.

The accounting schedules that are part of the Report reflect the OUCC's disagreement with the derivation of the rate increases that Wildwood maintained in the Application could be justified (i.e., 145%). Nevertheless, those schedules still show that increases to the recurring monthly rates and charges collects from its retail customers of approximately 118.91% are indicated. Accordingly, the OUCC recommended in its Report that the Commission approve the increases proposed by Wildwood. Wildwood responded to the Report and indicated that, for purposes of settling the issues before the Commission in this proceeding, it could agree with the financial presentation contained in the accounting schedules included in the Report

B. District Agreement. Wildwood explained in the Application that its March 26, 2009 Wastewater Operations and Management Agreement with the Morgan County Regional

Sewer District, a copy of which is part of the Application, is the outgrowth of its efforts to assist Morgan County address wastewater disposal problems and, in particular, within the Wiser Addition. That subdivision, currently comprised on 90 homes, has been plagued by septic failures in recent years.

Under the March 26, 2009 Wastewater Operations and Management Agreement, Wildwood treats the wastewater generated by the Regional Sewer District's customers within the Wiser Addition, as well as perform certain maintenance and customer service functions for the Regional Sewer District. In return for those services, Wildwood receives from the Regional Sewer District a monthly fee of \$2,700, which fee is subject to increase as new lots beyond the 90 currently existing are able to access the Regional Sewer District's system and in the event wastewater flow from that system exceeds a monthly average of 27,900 gallons. The monthly fee also is subject to adjustment at the end of each 5-year term of the agreement.

Wildwood has taken into consideration in determining its annual revenue requirements the \$2,700 monthly fee (annual fee of \$32,400) the Regional Sewer District currently pays for services received from Wildwood. Wildwood also has factored in the wastewater flow from the Wiser Addition in projecting its treatment plant's usage.

The OUCC indicated in the Report that it had been concerned that Wildwood's customers could be subsidizing the Regional Sewer District and analyzed this possibility. However, as reflected in the Report the OUCC determined that, because the proposed increases in Wildwood's recurring monthly rates and charges was limited to approximately 93%, any subsidization of the Regional Sewer District by Wildwood's customers was effectively eliminated.

The OUCC also stated in its Report that if it were to propose a cost of equity, this would likely lead to a finding of a cost of capital of 7.875%, which it noted was greater than the cost of capital Wildwood proposed in the Application . The OUCC's Report noted the utility's decision to seek less than both what the utility and the OUCC considered to be justified by the evidence. The OUCC, therefore, recommended the Commission approve the terms of Wildwood's March 26, 2009 Wastewater Operations and Management Agreement with the District.

4. **Settlement Agreement.** The Settlement Agreement between the parties recites that it addresses all of the issues before the Commission in this Cause, including the following:

A. **Test Year.** The period used by both Wildwood and the OUCC for determining Wildwood's revenues and expenses incurred in providing sewer disposal service to its customers was the twelve months ended December 31, 2008. The parties request that we find that this twelve month period, with adjustments for changes that are fixed, known and measurable, are sufficiently representative of Wildwood's normal operations to provide reliable information for ratemaking purposes.

B. **Rate Base.** Wildwood and the OUCC agree that Wildwood's utility properties used and useful for the provision of sewage disposal service to the public are properly valued for purposes of this proceeding only as of July 31, 2009 and, as of that date, the original cost depreciated value of Wildwood's utility properties was \$1,086,710. The parties also agree that, for purposes of this proceeding only, \$1,086,710 is the fair value of Wildwood's properties in service and used and useful for the convenience of the public as of July 31, 2009. After making provision for working capital of \$5,872, the parties agree that Wildwood's regulatory fair value rate base for purposes of this proceeding is \$1,092,582.

C. **NOI at Present Rates.** The Settlement Agreement reflects that Wildwood's pro forma net operating income under its present rates and charges is no more than \$15,200. That amount of net operating income is less than the fair return of identified above that could be justified and, as a result, the parties agreed that Wildwood is entitled to collect rates and charges that will provide it with an opportunity to earn a higher net operating income than its present rates and charges generates.

D. **Potential Increase.** The OUCC's Report indicated that for purposes of this proceeding only that Wildwood's recurring monthly rates and charges collected from its retail customers could be increased so as to produce additional operating revenues of no less than \$121,414 and, together with other revenues, possibly produce total pro forma operating revenues of no less than \$223,714. Such an amount of additional operating revenues (i.e., \$121,414) would represent a 118.91% increase over the amount produced under Wildwood's current recurring monthly rates and charges (i.e., \$102,110) and reflects the effect of the increased revenue on federal and state income taxes, Indiana gross receipts tax and the Commission's fee.

E. **Allowed Increase.** Notwithstanding the potential increases the parties agreed could be authorized, the parties agreed the Commission should limit the increases in the recurring monthly rates and charges Wildwood collects from its retail customers to the following amounts:

Type of Customer	Existing Rate	Proposed Rate	Increase
Residential & Commercial (per EDU)	\$41.44	\$80.00	\$38.56
School: During School Year (per school user based on average daily attendance)	\$0.95	\$1.83	\$0.88
School: When School is not in session	\$66.61	\$128.59	\$61.98

According to the parties, increasing each of the above-listed recurring monthly rates and charges by the indicated amounts will provide Wildwood with an opportunity to earn additional operating revenue from its recurring monthly rates and charges collected from its retail customers of \$65,554. With such additional operating revenue from those recurring monthly rates and charges, Wildwood's revenue requirement under the Settlement Agreement is as follows:

<u>Revenue Requirement</u>	
Rate Base	\$1,092,582
Effective Rate of Return	<u>4.8919%</u>
Resulting Net Operating Income	\$53,448
Less: NOI Under Present Rates	<u>\$15,200</u>
Additional NOI Required	\$38,248
Gross Revenue Conversion Factor	<u>1.7139</u>
Recommended Revenue Increase	\$65,554

The parties agreed that, while an increase of only \$65,554 in operating revenue from the rates and charges collected from retail customers is insufficient to cover anticipated costs and allow Wildwood an opportunity to earn a fair return as indicated by either parties' calculated cost of capital, such an increase is fair and reasonable under the circumstances and, when combined with the \$32,400 Wildwood earns annually under the terms of its March 26, 2009 Wastewater Operations and Management Agreement with the District and from other sources, will provide Wildwood an opportunity to realize an acceptable level of operating income at this time and not impede its ability to obtain reasonable additional capital necessary to enable it to render adequate, reliable and safe sewage disposal service.

F. **Phase-in of Allowed Increase.** In addition to limiting the magnitude of the increases, the parties proposed that Wildwood implement the allowed increases in recurring monthly rates and charges collected from its retail customers in two phases. According to the parties, Wildwood should be allowed to file a new schedule of rates and charges implementing

the first phase of the allowed rate increase in the form set forth on Joint Settlement Exhibit 1 within 30 days of the Commission's approval of a Final Order. Upon that schedule becoming effective, Wildwood should cancel its currently existing schedule of rates and charges. Further, the parties agree that Wildwood should be permitted to file a new schedule of rates and charges in the form set forth on Joint Settlement Exhibit 2, which would implement the second phase of the allowed rate increase, concurrently with the schedule implementing the first phase of the allowed rate increase. The parties agree, however, that under no circumstances would the new schedule of rates and charges for the second phase, i.e., Joint Settlement Exhibit 2, become effective prior to October 15, 2010. Under the terms of the Settlement Agreement, upon the rate schedule implementing the second phase of the allowed rate increase becoming effective, Wildwood would cancel its then existing schedule of rates and charges, i.e., the schedules implementing the first phase of the allowed increase.

G. **District Agreement.** The parties agreed that the Commission should approve for purposes of this Cause Wildwood's March 26, 2009 Wastewater Operations and Management Agreement with the District. The parties also agreed, however, that the Commission should find that approval of the agreement with the District does not, and should not be construed to, foreclose in future general rate cases consideration of whether the provisions of that agreement grants the District an unreasonable or undue preference or advantage at the expense of Wildwood's other customers, or foreclose the granting of rate relief that keeps costs associated with such from being the responsibility of Wildwood's other customers.

H. **Additional Covenants.** The Settlement Agreement contains the following additional provisions.

i. **Rate Moratorium.** The parties observe in the Settlement Agreement that the proposed increases in Wildwood's recurring monthly rates and charges of approximately 93% are significant. In order to assist customers by lessening the prospect of additional rate increases in the foreseeable future, Wildwood agreed that it would not file a rate case under Indiana Code § 8-1-2-61 or Indiana Code § 8-1-2-61.5 before June 1, 2012; provided, however, Wildwood could file a rate case prior to that date (a) pursuant to Ind. Code § 8-1-2-113; (b) if needed to comply with requirements imposed by a court or environmental regulatory agency having jurisdiction over Wildwood or its facilities; or (c) with the prior written approval of the OUCC.

ii. **Customer Growth Information.** The parties agreed that Wildwood should provide all information concerning customer growth on its system required as part of its annual report filing with the Commission and, if requested by the Commission or OUCC in writing, provide such additional information concerning customer growth on its system as may be requested.

iii. **Rate Case Expenses.** According to the parties, it may be necessary for Wildwood to file a new rate case shortly after the expiration of the moratorium described above and before it has recovered all of the agreed-upon rate case expenses, i.e., \$29,639, which they have agreed should be amortized and recovered over five (5) years. Consequently, in order to avoid adversely affecting Wildwood's financial position through a write-off of the unrecovered rate case expenses, the parties agreed that any portion of the rate case expenses allowed in this case that has not been recovered at the time Wildwood files its next rate case (whether filed under Ind. Code § 8-1-2-61 or Ind. Code § 8-1-2-61.5) should be added to and treated for all purposes as part of the rate cases expense allowed in that next rate case.

I. **Effect of Settlement.** The Settlement Agreement states the parties agreed that the terms and conditions set forth in it represent a fair, reasonable and just resolution of all the issues in this Cause. The Settlement Agreement further provides that it shall not be construed nor be cited as precedent by any person or deemed an admission by any party in any other proceeding except as necessary to enforce its terms before the Commission, or before any court of competent jurisdiction on these particular issues.

5. **Commission 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 also require that settlements be supported by probative evidence. 170 IAC 1-1.1-17(d).

Wildwood’s evidence shows that it believes it could justify an across-the-board increase in its recurring monthly rates and charges of approximately 145%. In recognition of the impact such increases would have on its customers, however, Wildwood limited the increases in its recurring monthly rates and charges it requested to approximately 93%. While disagreeing with

Wildwood's evidence concerning the rate increases that could be justified, the Report's accounting schedules (which Wildwood accepts for purposes of settlement) still show that increases of approximately 118.91% are warranted and recommended that the Commission allow the requested increases of approximately 93%. As the parties have agreed, the revenue generated by such an increase, when combined with revenue from the Regional Sewer District and other sources, will provide Wildwood an opportunity to realize an acceptable level of operating income at this time and not impede its ability to obtain reasonable additional capital necessary to enable it to render adequate, reliable and safe sewage disposal service.

Wildwood and the OUCC also have proposed in settlement that (i) the allowed increases in Wildwood's recurring monthly rates and charges should be implemented in two phases or steps; (ii) that Wildwood should observe a conditional moratorium on filing for additional rate increases in the foreseeable future until after June 1, 2012; and (iii) in order to assist in monitoring the continued reasonableness of its rates and charges, Wildwood should comply with its obligations to provide accurate information concerning customer growth on its system as part of its annual report filing with the Commission and provide such information to this Commission or the OUCC upon request. These proposals, together with Wildwood's proposal to limit the magnitude of the increases in its recurring monthly rates and charges to approximately 93%, will further lessen or eliminate the adverse affects of otherwise significant rate increases.

The parties have agreed that Wildwood should be allowed to recover a reasonable level of legal, accounting and other expenses over a 5-year period. The Settlement Agreement also recites, however, that Wildwood may have to seek additional rate increases before that 5-year period expires. Accordingly, the parties have also agreed that, if any portion of the allowed rate case expenses have not been recovered at the time Wildwood files its next rate case, the amount

of the unrecovered expense amortization should be added to and treated for all purposes as part of the rate cases expense allowed in that next rate case. In this way, Wildwood can avoid having its financial position adversely affected in the future by a write-off of the unrecovered rate case expenses.

Finally, there was no dispute that the Commission should approve Wildwood's March 26, 2009 Wastewater Operations and Management Agreement with the Regional Sewer District. Wildwood has the capacity to treat the wastewater the agreement call for it to treat and the managerial and technical expertise to perform the other services the District agreement requires. Also, the revenue Wildwood will receive from the District under that agreement reduces the revenue requirements that would be reflected in the rates and charges Wildwood's other customers would have to pay and, as the Report indicates, that revenue is adequate to avoid any subsidization of the District by Wildwood's customers. Nevertheless, paragraph 6 of the Settlement Agreement provides that the existence of any such subsidization can be investigated and addressed in future general rate cases.

Based on the above, we find that the Settlement Agreement is reasonable, that its terms are in the public interest, and that it represents a desirable and lawful resolution of the matters at issue in this proceeding. The Settlement Agreement should be approved in its entirety. Further, with regard to future use, citation, or precedent of the Settlement Agreement, we find that our approval of the terms of the Settlement Agreement should be construed in a manner consistent wit our finding In Re Richmond Power & Light, Cause No. 40434 (approved March 19, 1997).

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

1. The Settlement Agreement, a copy of which is attached to this Order, is hereby accepted and approved in its entirety and without modification.

2. Wildwood is hereby authorized to increase its recurring monthly rates and charges in the manner set forth in Finding No. 4(E) of this Order in order to have the opportunity to earn from those rates and charges additional operating revenues for its sewage disposal utility of \$65,554.

3. Wildwood shall phase-in the allowed increases in its recurring monthly rates and charges in the manner set forth in Finding No. 4(F) of this Order.

4. Wildwood shall file with the Water/Wastewater Division of the Commission new schedules of rates and charges consistent with Finding Nos. 4(F) of this Order, which schedules of rates and charges shall be effective on and after the date of approval and in accordance with their terms.

5. Wildwood's March 26, 2009 Wastewater Operations and Management Agreement with the Morgan County Regional Sewer District is hereby approved for purposes of this Cause, subject to the agreement of the parties described in Finding No. 4(G) of this Order.

6. In accordance with Indiana Code § 8-1-2-70, Wildwood shall pay the following itemized charges within twenty (20) days from the date of this Order to the Secretary of the Commission, as well as any additional costs which were or may be incurred in connection with this Cause:

Commission Charges	\$ _____
OUCG Charges	\$ _____

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

HARDY, ATTERHOLT, GOLC, LANDIS AND ZIEGNER CONCUR:

APPROVED: _____

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

Brenda A. Howe
Secretary to the Commission